



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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C.R.P (MD) No.884 of 2017andC.M.P. (MD) No.3902 of 2017

M.Murugan

... Petitioner/Petitioner

Vs.

1.Karuppaiah

2.Latha

... Respondents/Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decreetal order dated 12.01.2017 made in I.A.No.288 of 2016 in O.S.No.180 of 2015 on the file of the Principal District Munsif, Manamadurai.

For Petitioner : Mr.K.Guhan

ORDER

The revision petitioner herein as plaintiff filed a suit for declaration and injunction, alleging that the suit property was jointly held by him and the second respondent. Whereas, without the knowledge and consent of the revision petitioner, the second respondent has sold a portion of the suit property to the first respondent. Therefore, to declare the said sale deed as null and void and to restrain the respondents from interfering with the possession and not to put up any construction in the suit property, the present suit has been filed.

2.Pending trial, the revision petitioner has taken out an application to amend the plaint to the effect of including the relief of partition of the suit property between him and the second respondent herein. The trial Court, after considering the application and the counter filed therein, has held that the cause of action mentioned in the suit for declaration in respect of the sale deed dated 05.08.2010 as null and void totally differs from the cause of action for partition.

3.It is not in dispute that out of ten cents of the land ~~jointly held by the revision petitioner and the second respondent~~, only five cents have been alienated to the first respondent by the second respondent and the remaining five cents



are still held jointly. Whereas, the contention of the revision petitioner is that without his knowledge, five cents of the suit property have been sold by the second respondent to the first respondent and the suit has been filed only in respect of that portion.

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4.The specific case of the revision petitioner is that while the suit property was jointly purchased by him and the second respondent, without his consent and knowledge, the second respondent cannot alienate a portion of the property. Therefore, the prime contention and the relief sought in the said suit is to declare the said alienation as null and void. Though the contention of the revision petitioner is to divide the property according to their right, it is a different cause of action and different relief, which can be agitated through a separate suit. When a suit is filed challenging the action of the co-partner regarding the manner in which he has dealt with the share, clubbing the relief of partition will only retract the course of trial, due to introduction of new facts and new reliefs.

5.Therefore, this Court finds no reason to interfere with the order of the trial Court under Article 227 of the Constitution of India. Hence, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No Cost.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Manamadurai.

+1 cc to Mr.K.Guhan , Advocate in SR.No. 53477

KM/MR

AE/SV/05.05.2017/2P/3C

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