

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2018

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The Honourable Ms.Justice P.T.ASHA

**C.R.P(PD)No.871 of 2010
and
M.P.No.1 of 2010**

P.Balasubramanian

...Petitioner

Versus

1.Selvaraj
2.P.Ramasamy

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 29.01.2010 passed in I.A.No.1511 of 2009 in O.S.No.148 of 2005 on the file of the District Munsif Court, Tirupur.

For Petitioner : Mr.S.Kingston Jerald

For Respondents : Not ready in notice

ORDER

This Civil Revision Petition is filed challenging the order passed by the District Munsif Court, Tirupur in I.A.No.1511 of 2009 in O.S.No.148 of 2005 dated 29.01.2010, in and by which the learned District Munsif impleaded the first

respondent herein as a party defendant in the suit for partition filed by the petitioner herein.

2. The brief facts necessary for the disposal of the Civil Revision Petition are as follows:

The revision petitioner herein had filed a suit for partition and separate possession of his half share in the suit property. The revision petitioner would contend that the property originally belonged to Arumugham and after his death, his daughters had executed a release deed in favour of respondents herein and the said Arumugham died intestate on 14.03.2004 leaving behind his wife and two daughters to succeed to the suit property. It appears that the legal representatives of the said Arumugham have sold the undivided half share of the suit property under a sale deed dated 04.10.2004. After this purchase, the revision petitioner had also got the revenue records mutated in his name. After the sale in his favour, the revision petitioner's vendor and the second respondent received notice from the daughters of late Arumugham and that the second respondent and revision petitioner's vendor have jointly issued the reply notice.

Considering this, the revision petitioner had issued legal notice demanding partition from the second respondent. Despite several requests, the second respondent did not come forward for a partition. Constrained by the same, the revision petitioner filed a suit for partition.

3. The second respondent had filed a written statement in which he claimed right to the entire property on the basis of the Document dated 16.12.1993 said to have been executed by his grandfather Arumugham in his favour which was more in a form of Will. The second respondent would further contend that the revision petitioner was not entitled to any share in the property.

4. The revision petitioner had also filed Reply Statement refuting the various allegation in the written statement. When the suit was posted for trial, the son of the second respondent viz., the first respondent herein came forward with an Application to implead himself in the suit for partition claiming to be the absolute owner of the entire suit property on the

basis of the Will dated 14.09.1982 said to have been executed by his grandmother, Paruvathammal. It is his case that the entire property belonged to her. Therefore, he sought to be impleaded in the proceedings. The revision petitioner had resisted this petition by *inter alia* contending that the Application was nothing but a ruse to protract the proceedings and further the first respondent has come forward with a entirely new case and that he ought to have filed a separate suit to have his title declared.

5. The learned District Munsif, Tindivanam despite finding certain flaws in the case of the first respondent presumed that the said Paruvathammal could have got a right through her husband Pacha Gounder and therefore, allowed the implead Application filed by the first respondent. Challenging the same, the revision petitioner is before this Court.

6. Heard Mr.Kingston, learned counsel for the revision petitioner. Though notice has been served on the respondents,

they have not entered appearance and neither have they appeared before this Court. Therefore, this Court proceeded to hear the Civil Revision Petition.

7. From a perusal of the records, it appears that the father of the first respondent viz., the second respondent had come forward with a case admitting the case put forward by the revision petitioner but however contending that the share which was claimed by the revision petitioner had already been bequeathed to the second respondent by his grandfather Arumugham under a document dated 16.12.1993. After receiving a sum of Rs.30,00,000/-, the written statement does not make any whisper about the property belong to Pacha Gounder or that the said Pacha Gounder executed a Will in favour of the son of the first respondent. The first respondent has come forward with entirely a new case that the property belongs to Paruvathammal and not to Pacha Gounder which in my opinion is entirely a new case. If the first respondent wants to decent his title to the property, he ought to have filed a suit for partition. The Court below having found that the case of the first respondent is not borne out by the records but

P.T.ASHA, J.,

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to have dismissed the impugned Application. The learned Judge has committed a grave error in allowing the implead Application despite finding the case of the first respondent could be contrary to the records.

8. In the result, this Civil Revision Petition is allowed and the order passed by the learned District Munsif, Tirupur in I.A.No.1511 of 2009 in O.S.No.148 of 2005 dated 29.01.2010 is set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

To
The District Munsif,
Tirupur.

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