

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.499 of 2018

and

C.M.P.No.4468 of 2018

Narayanappa

... Appellant/Plaintiff

Vs

1.Krishnappa

2.Goopalliappa

3.Sampangiramaiah

4.Srinivasan

5.Nanjundappa

6.Narayanappa

7.Ramesh @ Lakkanna

8.The State of Tamil Nadu

Rep. by its Secretary to Government,
Housing and Urban Department,
Having office at Fort St. George,
Chennai 600 009.

9.The Special Thasildar,
Housing Scheme, Land Acquisition,
(TNHB Office)

Having office at Hosur 635 109.

... Respondents/Defendants

PRAYER : Civil Miscellaneous Appeal filed against the
fair and decreetal order dated 30.11.2017 in I.A.No.68 of 2017
in O.S.No.50 of 2011 on the file of the Additional District
Judge, Hosur.

For Appellant :Mr.K.S.Vaithianathan

For Respondents :Mr.K.Sudhakar

for Mr.V.P.K.Gowtham (for R1 to R7)

J U D G M E N T

The appeal has been preferred against the dismissal of receiver application filed by the appellant/plaintiff.

2.The appellant filed a Suit for partition, against the respondents herein in the year 2011. In the said Suit, respondents 1 to 4 remained exparte and the respondents 5 to 7 are contesting the suit by filing written statement. Pending trial, the appellant filed an application in I.A.No.68 of 2017 for appointment of receiver and I.A. No. 130 of 2017 for appointment of an Advocate Commissioner and both the applications were dismissed. As against the dismissal of the application seeking appointment of receiver, the present appeal has been filed.

3.The case of the appellant is that the suit mentioned properties belong to one Geebi Chennappan, who had two sons viz., 1.Alliappa and 2.Nanjappa and one daughter viz., Chennamma. The appellant is the son of Nanjappa. According to the appellant, the properties are ancestral properties of the appellant and the respondents, in which the appellant is entitled to 1/5th share and therefore, he filed the suit for partition. He has further stated that respondents 1 to 7 unlawfully trespassed into the suit properties and converted the suit properties as commercial sites and put up various garages, godowns, ware houses, auto mechanic sheds and residential plots and they are under the control of respondents 1 to 7. Respondents 1 to 7 are collecting rents and misusing the rental amounts and tampering the accounts and therefore, the application for appointment of receiver was filed. The said application was dismissed by the trial Court, against which only the present appeal has been filed.

4.Heard the learned counsel for the appellant and the learned counsel for the respondents (for R1 to R7).

5.As rightly pointed out by the trial Court, the suit is for partition and the right of the appellant has to be proved only before the trial Court at the time of trial. Moreover, the suit was filed in the year 2005 and after passage of 6 years, the application for appointment of receiver has been filed. Even a perusal of the plaint would disclose the extent of 5 properties alone and it has not furnished the details regarding the garages and commercial properties and other details which have been stated in the affidavit filed in support of the receiver application. When the suit is ready for trial, it is not possible to appoint a receiver, which is an extreme relief and could be granted only in rare among the rarest cases, where it is proved that the property is misused and the income from

the properties are misappropriated.

6.The trial Court taking into consideration that the suit is pending for more than 5 years and the entitlement of appellant, decided to dismiss the application. Moreover, the dismissal of the application for appointment of advocate commissioner by the Trial Court was also confirmed by this Court by order dated 16.03.2018 in CRP.No.809 of 2018.

7.In the above said circumstances, there is no occasion for this Court to entertain this appeal. Hence, the appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

8.However, taking into consideration that the suit is pending for more than 11 years, it is appropriate to direct the trial Court to dispose of the Suit on or before 31.08.2018 and file a report before this Court.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sai

To
The Additional District Judge,
Additional District Court,
Hosur.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Gowtham, Advocate SR.No.23756
+1cc to Mr.Chandrasekaran, Advocate SR.No.23652

C.M.A.No.499 of 2018

MG(CO)
GN(21/05/2018)