

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1572 of 2015
and M.P.No.1 of 2015

R.Kumarasamy

.. Petitioner

Vs.

1.K.Suresh
2.Duraisamy
3.Saraswathi
4.Thulasimani
5.Thilagavathi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.01.2015 made in I.A.No.95 of 2014 in O.S.No.409 of 2011 on the file of the Principal Subordinate Court, Erode.

For Petitioner

: Mr.S.Vediappan

for Mr.V.Balamurugane

For R1,R3 to R5

: Mr.J.Titus Enock for
Mr.I.C.Vasudevan

For R2

: No appearance

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 06.01.2015 made in I.A.No.95 of 2014 in O.S.No.409 of 2011 on the file of the Principal Subordinate Court, Erode.

2.The petitioner is first defendant, first respondent is plaintiff, respondents 2 to 5 are the defendants 2 to 5 in O.S.No.409 of 2011 on the file of the Principal Subordinate Court, Erode. The first respondent filed the said suit for partition against the second respondent and allotment of 50% of the suit property and declaration that he is the absolute owner of the half share of the suit property and recovery of vacant possession of the property from the petitioner by removing the superstructure.

3.According to the first respondent, second respondent purchased 5022 1/2 sq.ft. in common under a registered sale deed dated 17.04.1996 and father of the first respondent viz., Kannusamy purchased another extent of 5022 1/2 sq.ft. in common under a registered sale deed dated 24.04.1996 and they were in joint possession and enjoyment of the properties. The first respondent's father and second respondent leased out the suit

property to one Siraj for a period of five years. The first respondent's father in the Will dated 09.10.1999 bequeathed his share in the suit property to the first respondent. First respondent's father died on 11.12.1999. The petitioner encroached a portion of the suit property and put up superstructure inspite of first respondent's objection. The first respondent gave a complaint to the police. The petitioner is very influential person and the police did not take any action against the petitioner and hence, the first respondent gave a complaint to the Land Grabbing Cell. The petitioner is an accused in the criminal case for murdering his own elder brother namely, Viswanathan. He is threatening the attesting witnesses to the Will executed by the first respondent's father and attesting witnesses are afraid to give evidence. The third respondent is the first wife of the said Kannusamy, who is father of the first respondent. The respondents 4 and 5 are mother and sister of the first respondent respectively. In the meanwhile, respondents 3 to 5 released their respective shares in favour of the first respondent in the suit property by way of registered release deed dated 10.04.2013. In the circumstances, first respondent has filed I.A.No.95 of 2014 for amendment of the plaint to delete his claim based on the Will executed by his father dated 09.10.1999 and

include the averment with regard to the release deed dated 10.04.2013, which was executed by the respondents 3 to 5.

4.The petitioner filed counter affidavit and denied all the averments made by the first respondent. According to the petitioner, he was falsely implicated in the murder case. The suit property was purchased in the name of his brother Viswanathan, who was in bad company and he was murdered under mysterious circumstances. The first respondent's maternal uncle viz., Ramasamy, is the business rival of the petitioner and due to enmity, the petitioner was falsely implicated in the murder case. The petitioner's elder brother Viswanathan died as bachelor and the petitioner's mother inherited the suit property. First respondent's maternal uncle Ramasamy took mother of the petitioner to Dharmapuri and obtained power of attorney and sold the property to the third parties. The sale deeds were not acted upon and possession was not handed over. The averment that the respondents 3 to 5 executed the release deed in favour of the first respondent in order to avoid technicality is false. By amendment, first respondent is introducing a new case and new cause of action and prayed for dismissal of the application.

5.The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application holding that the first respondent is not introducing any new case or new cause of action.

6.Against the said order dated 06.01.2015 made in I.A.No.95 of 2014 in O.S.No.409 of 2011 on the file of the Principal Subordinate Court, Erode, the present Civil Revision Petition is filed by the petitioner/first defendant.

7.Heard the learned counsel for the petitioner as well as the respondents 1, 3 to 5 and perused the materials available on record.

8.From the materials available on record, it is seen that the first respondent is seeking partition of the suit property into two half shares and allot one half share to the first respondent and recovery of possession from the petitioner. According to the first respondent, his father and the second respondent had purchased the suit property jointly and first respondent's father has half share in the suit property. The third respondent is the first wife of the first respondent's father, respondents 4 and 5 are the mother and sister of the first respondent respectively. First respondent's father by Will

dated 09.10.1999 bequeathed his half share in the suit property to the first respondent. The petitioner has encroached the suit property and the police did not take any action against the petitioner on the complaint given by the first respondent, as he is very influential person. Due to fear on the petitioner, the attesting witnesses to the Will are not willing to give evidence. In the meanwhile, respondents 3 to 5 released their right in the suit property in favour of the first respondent.

9. In view of the same, first respondent has sought for amendment deleting averment with regard to his claim based on the Will dated 09.10.1999 executed by his father and include the averment with regard to his claim based on the release deed executed by the respondents 3 to 5. The first respondent is not altering the reliefs prayed for in the suit and also the relief for recovery of possession from the petitioner. First respondent has to prove that his father purchased the property along with the second respondent and his father is entitled to half share in the suit property. Similarly, the petitioner has to prove that his elder brother Viswanathan is owner of the suit property vide registered sale deeds dated 18.03.1992, even before the alleged sale in favour of the first

respondent's father and second respondent. The petitioner has to prove that the sale by the mother of the petitioner after the death of his elder brother is not valid.

10. The issues to be decided in the suit are whether the first respondent's father had valid title in the suit property and the petitioner encroached the suit property and whether he is liable to surrender the same to the respondents 1 and 2. It is pertinent to note that the respondents 3 to 5 dehors the Will, have share in the suit property, wherein the first respondent is entitled to half share in the suit property. They have not disputed the Will put forth by the first respondent and the release deed executed by them. The learned Judge has rightly held that by amendment, the first respondent is not introducing any new case or cause of action. There is no irregularity or illegality in warranting interference by this Court with the order of the learned Judge dated 06.01.2015.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

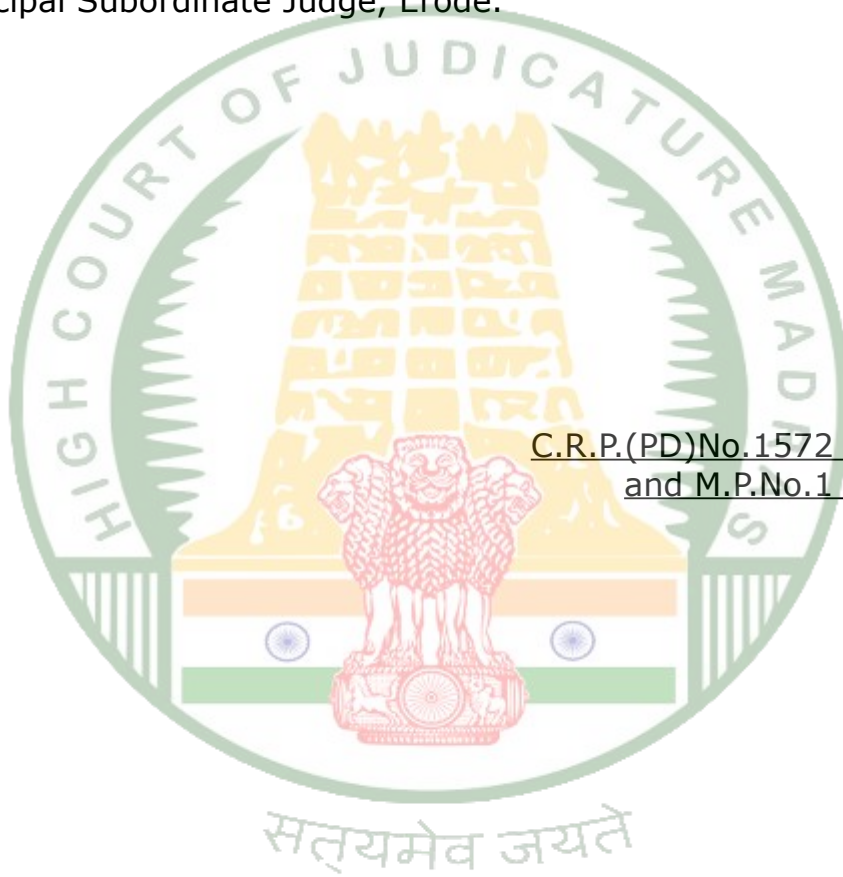
21.03.2018

Index: Yes/No
kj

V.M.VELUMANI,J.

kj

To
The Principal Subordinate Judge, Erode.



C.R.P.(PD)No.1572 of 2015
and M.P.No.1 of 2015

WEB COPY 21.03.2018