

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 300 of 2018
and
C.M.P. No.1626 of 2018

M. Jagadeesan

.. Petitioner

Vs

1. M. Kothandan
2. M. Panduranngan
3. M. Deivasigamani
4. Deivanai

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the order and decreetal order dated 30.06.2017 passed by the Subordinate Court, Poonamallee in I.A. No.762 of 2014 in O.S. No.295 of 2013.

For Petitioner : Mr. A. Chandra Mouleeswaran

For Respondents : Mr. G.R.M. Palaniappan

ORDER

This revision petition is filed seeking to set aside the order and decretal order dated 30.06.2017 passed by the Subordinate Court, Poonamallee in I.A. No.762 of 2014 in O.S. No.295 of 2013.

2. The learned counsel for the petitioner would submit that the petitioner has filed the suit in O.S. No.295 of 2013 for partition, for separate possession of his 1/5 share in the suit properties. In the aforesaid suit, the respondents filed I.A. No. 762 of 2014 for permitting them to add and include the property viz. lands comprised in S.No. 452/1 measuring an extent of 1 acre and 7 cents at Vellanoor Village, alleging that it is a joint family property and claiming right in the said property. It is further submitted that the suit schedule properties absolutely belong to petitioner's wife Kousalya, vide sale deed dated 24.05.1974, registered as Document No.1231 of 1974 before the Sub Registrar, Poonamallee. Against the false claim made by the respondents, the petitioner's wife filed a suit in O.S. No.100 of 2009 before the Sub Court, Poonamallee seeking to declare that she is the absolute owner of the said property and for other reliefs. The respondents also filed a suit in O.S. No.69 of

2001 against the petitioner's wife, Nataraja Reddiar and the petitioner before the same Court, to declare that they are the lawful owners of the suit property. In the aforesaid suit, the petitioner's wife filed an application in I.A. No. 200 of 2012 seeking to reject the plaint. After considering the submission of the parties, the said application was allowed. Challenging the aforesaid order passed, the respondents preferred A.S. No.15 of 2013 before the III Additional District Judge, Thiruvallur and the petitioner's wife also filed cross objections. The appeal suit was allowed and the cross objection was dismissed. Aggrieved by the judgement and decree passed in the appeal and cross objections, appeals were preferred before this Court in S.A. Nos. 64 and 65 of 2014 by the petitioner's wife and the same are pending.

3. According to the petitioner, the respondents have filed the instant application in I.A. No.762 of 2014 in O.S. No.295 of 2013 before the court below, to add and include the property described in the schedule as item III of plaint schedule property. In the aforesaid application, it is observed by the court below that the respondents have suppressed about filing of the suit in O.S.No.69 of 2011 by them and

without considering the suppression of materials that the respondents have filed the aforesaid suit for declaration of the suit schedule property claiming that the respondents are the absolute owner of the suit schedule property. Both the parties agree that the aforesaid suits have been filed claiming right over the property by the petitioner's wife as well as the respondents.

4. In view of the above submissions made by the parties, it is found that the application to add and include the said property has been filed, without disclosing the correct facts. The Appellate Court has failed to consider the non-disclosure of the aforesaid facts in the application, particularly filing of the earlier suit and pendency of the second appeal before this Court. Therefore, the order dated 30.06.2017 passed by the Subordinate Court, Poonamallee in I.A. No.762 of 2014 in O.S. No.295 of 2013 is liable to be set aside.

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5. In fine, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

05.02.2018

Index : Yes/ No

Speaking order/ Non speaking order
avr

To

The Subordinate Judge
Poonamallee.



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D. KRISHNAKUMAR J.,

avr



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