

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.969 of 2014
& M.P.No.1 of 2014

1.M.A.K.Balakrishnan
2.B.Indirani
3.A.Arun
4.B.Krishnanand

.. Petitioners

Vs.

1.Ammini Ammal (Deceased)
2.Thangaraj (Deceased)
3.P.Chandran
4.P.Subramani (Deceased)
5.P.Satyamoorthy
6.Vijayalakshmi
7.Uma Shankari
8.P.T.Kumaran
9.P.T.Deepa
10.Esther Rani
11.S.Navin Kumar
12.S.Soni
13.S.Sumithra
14.Devaki (Deceased)
15.Bhuvaneswari
16.The Chairman
State Housing Board,
Government of Tamilnadu,
Nandanam, Chennai.
17.B.Udhayashankar

(R17 impleaded vide order of Court dated
23.12.2016 made in M.P.No.1/2015 in
C.R.P.No.969/2014)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 25.02.2014 made in I.A.No.13254 of 2013 in I.A.No.17272 of 2008 in O.S.No.4710 of 1996 on the file of the III Assistant City Civil Court, Chennai.

For Petitioners : Mr.N.S.Nandakumar
for Mr.Selvan Babu

For R1, R2 & R14 : Died

For R3 to R13 : Mr.M.Chidambaram

For R15 : Mr.J.Venugopal

For R16 : No appearance

For R17 : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 25.02.2014 made in I.A.No.13254 of 2013 in I.A.No.17272 of 2008 in O.S.No.4710 of 1996 on the file of the III Assistant City Civil Court, Chennai.

2.The petitioners are the defendants 3 to 6, respondents 1 to 9 are the plaintiffs, respondents 10 to 13 are the legal heirs of the deceased 4th respondent, respondents 14 and 15 are the defendants 1 and 2, 16th respondent is the 7th defendant and 17th respondent is

the legal heir of the deceased first respondent in O.S.No.4710 of 1996 on the file of the III Assistant City Civil Court, Chennai.

3. According to the petitioners, the first respondent, since deceased filed C.S.No.429 of 1988 before this Court for partition. In O.A.No.1913 of 1988 filed by the deceased first respondent, this Court granted interim injunction. The respondents 14 & 15, suppressing the pendency of the suit as well as interim injunction, sold the suit property to the petitioners. C.S.No.429 of 1988 was transferred to III Asst. Judge, City Civil Court, Chennai and was re-numbered as O.S.No.4710 of 1996. After transferring the case, the petitioners were impleaded as defendants. Notice for impleading was served on the petitioners when they almost completed the new construction put up by them in the suit property. After contest, a preliminary decree was passed. The First Appeal, Second Appeal and SLP filed by the petitioners were dismissed. The respondents 1 to 3 filed I.A.No.17272 of 2008 for passing final decree. The petitioners in the said application, filed present application I.A.No.13254 of 2013 for including the properties mentioned therein. According to the petitioners, respondents 14 & 15, from and out of the sale price of the suit property which is an ancestral property, purchased the properties now sought to be included. In

view of the fact that purchase by the respondents 14 & 15 are from and out of the ancestral joint family property nucleus, the properties mentioned therein in I.A.No.13254 of 2013 are also joint family properties and liable for partition.

4.The respondents 1 to 3 in the counter affidavit have stated that petitioners did not take the present stand in the suit as well as in the appeals and SLP filed by them. Only to drag on the proceedings, the petitioners have filed the present application. The respondents 14 & 15 filed counter and submitted that the properties now sought to be included are not joint family properties and it is their separate property and they have not cheated the petitioners.

5.The learned Judge, considering all the materials on record, averments in the affidavit, and counter affidavit, dismissed the application.

6.Against the said order of dismissal dated 25.02.2014 made in I.A.No.13254 of 2013 in I.A.No.17272 of 2008 in O.S.No.4710 of 1996, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel appearing for the petitioners as well as respondents 3 to 13, 15th respondent and 17th respondent and perused the materials available on record.

8. The contention of the learned counsel for the petitioners is that the properties now sought to be included are liable for partition since the same was let out to be mentioned in the suit for partition which can be included at any stage, even in the Appellate stage and defendant in partition suit is also entitled to take proceedings to include the left out properties liable for partition. These well settled properties are not applicable to the facts of the present case. The contention of the learned counsel for the petitioner is that the respondents 14 & 15 purchased the properties in question by selling ancestral joint family suit property and hence these properties are also joint family properties. This contention is denied by the respondents 14 & 15. Whether the properties in question were purchased by selling the ancestral joint family suit property or purchased from and out of the funds of the respondents 14 & 15 and whether the said properties are joint family properties or not cannot be decided in the application for final decree. The petitioners have to work out their remedy by initiating proper legal proceedings against the respondents 14 & 15, as per law. Further,

the petitioners have not stated in the suit, appeals, SLP that these properties are joint family properties liable for partition. In view of the above facts, the contention of the respondents that the application is filed only to drag on the proceedings is acceptable.

9.The learned Judge considered all the above facts in proper perspective and exercising his power, dismissed the application by giving cogent and valid reason. There is no infirmity in the said order warranting interference by this court.

10.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 1988, the learned Judge is directed to dispose the final decree application filed in the year 2008, within a period of six (6) months from the date of receipt of a copy of this order.

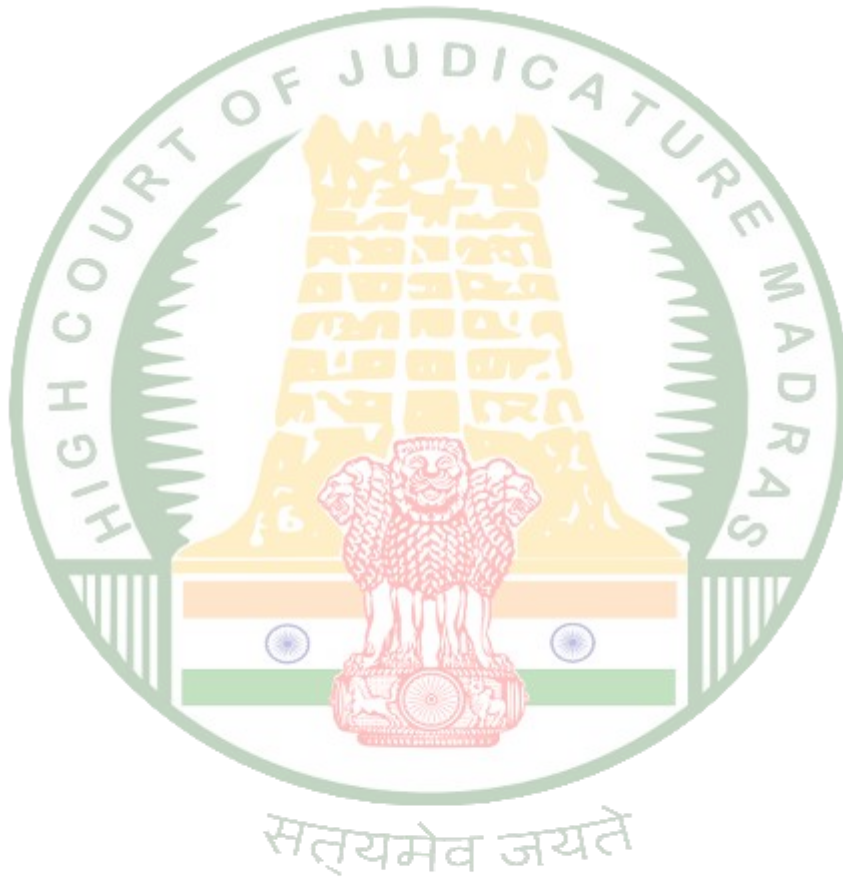
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30.01.2018

Index :: Yes/No
Speaking Order/Non-Speaking Order
gsa

To

The Judge,
III Assistant City Civil Court,
Chennai.



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V.M.VELUMANI,J.

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