

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4027 of 2012
& M.P.No.1 of 2012

R.Selvarajan

.. Petitioner

Vs.

1.Easwari @ Annapoorani
2.Manicka Sundaram
3.Baby @ Thilagavathi
4.Madhan Kumar
5.Nisanth

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.09.2012 made in I.A.No.248 of 2012 in O.S.No.20 of 2009 on the file of the II Additional Subordinate Court, Erode.

For Petitioner : Mr.L.Mouli

For R1 : No appearance

For R2 to R5 : Mr.M.Guruprasad

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 05.09.2012 made in I.A.No.248 of 2012 in O.S.No.20 of 2009 on the file of the II Additional Subordinate Court, Erode.

2.The petitioner is third party, first respondent is the plaintiff and respondents 2 to 5 are the defendants 1, 3 to 5 in O.S.No.20 of 2009 on the file of the II Additional Subordinate Court, Erode. The first respondent filed the said suit for partition of the suit property. According to the first respondent, the suit property is a joint family property of the respondents. The respondents 2 to 5 did not agree for the partition. Hence, she filed said suit for partition. The petitioner filed I.A.No.248 of 2012 under Order 1 Rule 10 (2) and Section 151 of C.P.C for impleading himself as party defendant in the suit. According to the petitioner, his father, Ramasamy Naidu was absolute owner of 94 cents in S.F.No.254/1 (R.S.No.308/2 to 7, 309/7, 8 and 313/3). The respondents and others have initiated various proceedings without impleading his father and obtained collusive decree, allotting the share to the parties in the suit. The petitioner also filed suit for partition in O.S.No.166 of 2007 on the file of the I Additional District Munsif Court, Erode (formerly O.S.No.652 of 1995 on the file of the Principal Subordinate Court, Erode) and preliminary decree was passed in the said suit. According to the petitioner, the respondents have included the property belonging to him in the suit for partition and therefore, he is necessary and proper party to the present suit.

3.The first respondent and other respondents filed separate counter affidavits and denied that property of the petitioner is also subject matter of the present suit for partition. The suit properties are a different properties and nothing to do with property belonging to the petitioner and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit filed by the respondents, dismissed the application holding that the petitioner has not furnished any details to substantiate his claim that his property is also subject matter of the present suit for partition.

5.Against the said order of dismissal dated 05.09.2012 made in I.A.No.248 of 2012 in O.S.No.20 of 2009, the present Civil Revision Petition is filed by the petitioner.

6.The learned counsel appearing for the petitioner contended that the petitioner is absolute owner of 94 cents of land in S.F.No.254/1 (R.S.No.308/2 to 7, 309/7, 8 and 313/3) and respondents without impleading the petitioner as defendant, are collusively trying to get a decree in respect of the property

belonging to the petitioner. There are number of proceedings in respect of the said property praying for permanent injunction and partition. Suppressing the above proceedings, the first respondent filed suit only against the respondents 2 to 5, behind the back of the petitioner, knowing fully well that the petitioner is necessary and proper party in the present suit in respect of the suit properties.

7. Per contra, the learned counsel appearing for the respondents 2 to 5 contended that the partition sought for in respect of the property mentioned in the suit schedule property do not belong to the petitioner. The property of the petitioner is different from the property which is subject matter of the present suit. The learned counsel for the respondents 2 to 5 referred to the description of the property mentioned in the plaint and prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel for the petitioner as well as the respondents 2 to 5 and perused the materials available on record. Though notice has been served on the first respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

9. The reasoning of the petitioner for getting himself impleaded as defendant in the suit is that property measuring 94 cents belonging to him in S.F.No.254/1 (R.S.No.308/2 to 7, 309/7, 8 and 313/3) is also included in the present suit for partition. The said contention of the petitioner is denied by the respondents. According to the respondents, the property of the petitioner is not subject matter of the present suit and it is different property. A reading of the description of the property to the plaint schedule reveals that out of punja acre 6.27, the first respondent is seeking partition in respect of portions of the said land described in the schedule. The first respondent has given the extent of the land, survey numbers and boundaries. Out of the properties described, the first respondent is seeking 1/3 share. The petitioner has not mentioned in the affidavit as to in which portion of the property mentioned by the first respondent, the property of the petitioner measuring 94 cents is situated. The respondents have taken a specific stand that property of the petitioner is not a subject matter of the suit. The petitioner has failed to prove that his property is also subject matter of the property in the present suit. The learned Judge has considered all these facts in proper perspective and dismissed the application holding that the petitioner is not a necessary party in the present suit. There is no irregularity or illegality warranting

interference by this Court with the order of the learned Judge dated 05.09.2012 made in I.A.No.248 of 2012 in O.S.No.20 of 2009.

10.In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

09.03.2018

Index :: Yes/No
gsa

To

The II Additional Subordinate Judge,
Erode.



WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD)No.4027 of 2012
& M.P.No.1 of 2012

WEB COPY

09.03.2018