



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.2749 of 2015 (PD)

Devaki

... Petitioner/1st respondent/Plaintiff

Vs.

1.Charasekaran,
rep. by his power agent
Sathya Moorthy

..1st Respondent/Petitioner/7th defendant

2.O.M.S.Natarajan
3.O.M.S.Ganesan
4.O.M.S.Sabasivam
5.Saroja
6.Nagarethinam
7.Madhavi @ Madhavalakshmi

... Respondents 2 to 7/Respondents 2 to 7 /
Defendants 1 to 6

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and decreetal order dated 01.09.2015 passed in I.A.No.75 of 2015 in O.S.No.38 of 2013 on the file of the III Additional District Court, Pattukottai and allow the same.

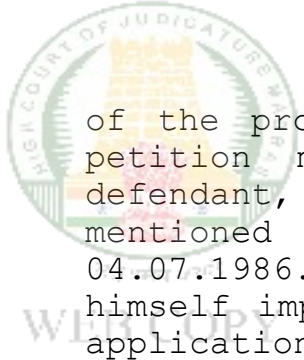
For Petitioner : Mr.T.R.Jeyapalam

For Respondents : Mr.K.P.Narayankumar - for R1
: R2 to R7 given up

ORDER

This Civil Revision Petition has been filed by the revision petitioner / plaintiff challenging the order, dated 01.09.2015, passed in I.A.No.75 of 2015 in O.S.No.38 of 2013 on the file of the III-Additional District Judge, Pattukottai, whereby and whereunder the Court below has allowed the petition filed by the first respondent / 7th defendant seeking to include the petition mentioned properties in the suit for comprehensive adjudication.

2. The revision petitioner / plaintiff filed the above suit for partition against the respondents 2 to 7 / defendants 1 to 6, who are the brothers and sisters of the revision petitioner / plaintiff. According to the 1st respondent / 7th defendant, he is the purchaser



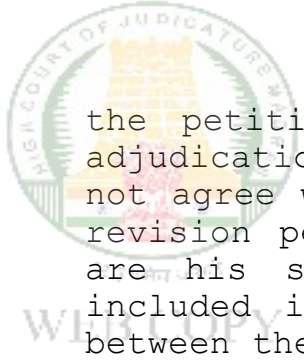
of the properties mentioned as suit item Nos.11 and 12 and also petition mentioned properties from the 4th respondent / 3rd defendant, who got title to the said properties and the petition mentioned properties on the registered settlement deed dated 04.07.1986. Raising the said contention, the 1st respondent herein himself impleaded as 7th defendant in the suit by way of filing an application. Subsequently, stating that the revision petitioner / plaintiff is taking serious steps to put up a compound wall around the petition mentioned properties, he has filed I.A.No.75 of 2015 seeking to include the petition mentioned properties also in the suit for comprehensive adjudication. The said petition was allowed by the Court below holding that no prejudice would be caused to the parties. Aggrieved by that order, the revision petitioner / plaintiff has filed this civil revision petition.

3.The learned counsel for the revision petitioner / plaintiff would submit that the petition mentioned properties have already been settled through a registered settlement deed in favour of the revision petitioner / plaintiff and others by her mother-in-law by name Ammakannu and the same cannot be included along with the suit properties and the Court below, without assigning any valid reason, has erroneously allowed the application and the said order cannot be sustained. Thus, he prayed to set aside the order dated 01.09.2015 passed by the Court below.

4. The learned counsel for the 1st respondent / 7th defendant would submit that the 1st respondent / 7th defendant has purchased the item Nos.11 and 12 of the suit properties and the petition mentioned properties, which have been allotted to the share of the 4th respondent / 3rd defendant through the registered partition deed dated 04.07.1986, from the 4th respondent / 3rd defendant. But, the revision petitioner / plaintiff has purposefully omitted to mention the petition mentioned properties in the plaint and attempted to disturb the peaceful possession and enjoyment of the said properties by putting up a compound wall and hence, he has filed the said interlocutory application to include the petition mentioned properties for comprehensive adjudication and the Court below has rightly allowed the same holding that no prejudice would be caused to the parties and the same need not be interfered with. Thus, he prayed to dismiss this civil revision petition.

5. Heard the learned counsel for both sides and perused the records carefully.

6. The revision petitioner / plaintiff has filed the suit for partition mentioning about 42 items of the properties, in which the suit item Nos.11 and 12 are stated to be purchased by the 1st respondent / 7th defendant from the 4th respondent / 3rd defendant by way of registered sale deed, dated 21.07.1991. Considering the above claim of the 1st respondent / 7th defendant in respect of the said properties, he was permitted to be impleaded as 7th defendant in the suit. While so, the 1st respondent / 7th defendant wants to implead



the petition mentioned properties in the suit for comprehensive adjudication. The other defendants viz., the defendants 1 to 6 did not agree with the 1st respondent / 7th defendant. According to the revision petitioner / plaintiff, the petition mentioned properties are his separate properties and therefore, the same cannot be included in the suit for partition. As there is no connection between the relief sought for by the revision petitioner / plaintiff and the petition mentioned properties, and the said properties are stated to be separate properties of the revision petitioner / plaintiff, the petition mentioned properties cannot be included in the present suit for a comprehensive adjudication. If the 1st respondent / 7th defendant is aggrieved, he has to file a separate suit. Without considering the above aspects, the Court below has erroneously allowed the interlocutory application filed by the 1st respondent / 7th defendant and hence, the order impugned in this revision petition is liable to be set aside and accordingly set aside.

7. In the result, this civil revision petition is allowed. No costs.

Sd/-
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1.The III Additional District Judge,
Pattukottai.

+1CC TO M/S.T.R.JEYAPALAM, ADVOCATE, SR NO.48566
+1CC TO M/S.K.P.NARAYANA KUMAR, ADVOCATE, SR NO.48443

C.R.P (MD) No.2749 of 2015 (PD)
14.02.2018

gcb

MS/SKN-RSK/SAR-3/15.03.2018/3P.4C