



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) No.1542 of 2017
and
C.M.P. (MD) No.8493 of 2017

Pazhani

... Petitioner/Petitioner/
Plaintiff

-vs-

1.Pulamadan
2.Annamalai

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 20.04.2017 passed in I.A.No.56 of 2017 in O.S.No.25 of 2014 on the file of District Munsif, Srivaikundam.

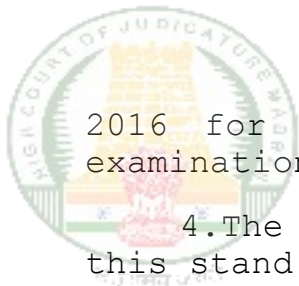
For Petitioner : Mr.M.P.Senthil
For R1 : Mr.N.GA.Natraj
For R2 : No Appearance

ORDER

The plaintiff in O.S.No.25 of 2014 on the file of the District Munsif Court, Srivaikundam is the revision petitioner herein. The suit is for partition. In the said suit I.A.No.56 of 2017 was filed for including one more item. The said application was dismissed by the Court below by order dated 20.04.2017. The correctness of the said order is questioned in this Civil Revision Petition.

2.The learned counsel for the petitioner reiterated the grounds set out in the memorandum.

3.As rightly pointed out by the learned counsel for the respondents, the suit for partition was instituted on the strength of two wills dated 26.06.1972 executed by one Velupandithar and another will dated 30.03.1984 executed by Muthuramalinga Pandithar in respect of first and second items respectively. The Court below is justified in observing that by permitting the impugned amendment, the suit for partition would also get altered. It is also relevant to point out that the plaintiff has examined himself as witness and his side was closed on 02.09.2016. The defendants filed I.A.No.760 of



2016 for recalling P.W.1. When P.W.1, was recalled for cross examination, the present amendment came to be filed.

4.The revision petitioner did not file any reply controverting this stand of the defendants set out in their counter statement.

5.One another aspect deserves to be noted. While opposing amendment application, the defendant pointed out that he has been in enjoyment of the item, that is sought to be included now, for the last thirty years and recognising his possession the Government has issued what is known as 2C patta in his favour. The said patta does not confer any title. It is a mere license to enjoy the usufructs. A doubt arose in my mind if a Government poramboke land can form the subject matter of a partition suit. Shri. S.Parthasarathy, Advocate, who is present in the Court points out that in **1999 (2) MLJ 757 [Packiyam Ammal vs. Pattu Ammal]**, His Lordship Mr.Justice S.S.Subramani held that even in the case of a government land, if the possessory right continued with the family, it has to be treated as a family asset and available for partition. Of course, any arrangement between the members of the family may not bind the government. This decision was followed in a subsequent case reported in **(2014) 1 MLJ 685 [R.Subramaniam and others and L.Saradha and others]**. Therefore, though the item can be included notwithstanding the fact that it belongs to government, it will have to be excluded as the proposed amendment will alter the character of the suit.

6.As a result the impugned order is sustained and this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The District Munsif, Srivaikundam
2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

TA

TE/VB/RSK/SAR-1: 22/10/2018 : 2P/4C