

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 18.01.2018
(Reserved on 20.12.2017)

WEB COPY

CORAM :**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

CRP (PD) (MD) No.1782 of 2017
and
CMP (MD) No.9539 of 2017

1) Gomathiammal
2) Selvam
3) Guruvammal
4) Mariammal

... Petitioners

vs.

1) Shanmugavel
2) Karuppiah
3) Subbulakshmi
4) Jothi Bai

... Respondents

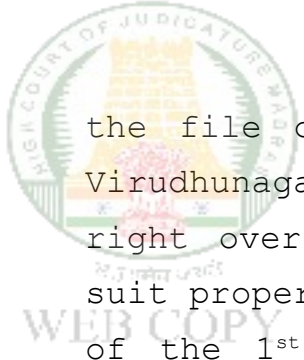
Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 12.09.2016 passed in I.A.No.563 of 2016 in O.S.No.185 of 2016 on the file of the Principal District Munsif Court, Srivilliputhur, Virudhunagar District.

For Petitioner : Mr.S.Mahalingam
For R1 : Mr.S.Manickam
R2 to R4 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 12.09.2016 passed in I.A.No.563 of 2016 in O.S.No.185 of 2016 on the file of the Principal District Munsif Court, Srivilliputhur, Virudhunagar District.

2.Learned counsel for the revision petitioners would submit <https://hcservices.ecourts.gov.in/hcservices/> that the revision petitioners are defendants 3 and 5 to 7 and the 1st respondent is the plaintiff in the suit in O.S.No.185 of 2016 on



the file of the Principal District Munsif Court, Srivilliputhur, Virudhunagar District. In the suit, the plaintiff claims partition right over the suit property. According to the petitioners, the suit property belonged to one Late Gurusamy Thevar who is the father of the 1st petitioner's husband one Late Paramasivam. The said Gurusamy Thevar had two sons namely, Paramasivam and Kodakanathan @ Mahalingam. Kodakanathan @ Mahalingam who was a bachelor predeceased his father. Hence, the suit property devolved upon Paramasivam after the death of Gurusamy Thevar. During 1992, the said Paramasivam died and his legal heirs, wife, sons and daughter, the revision petitioners herein, inherited the suit property. The petitioners were residing in a hut which is located in one part of the suit property and another part was used as a cattle shed. While so, the 1st petitioner submitted an application before the local body authority to construct a house in the suit property under Green House Scheme and the authorities accepted the said application under the said scheme and allotted Rs.2,10,000/- to construct the house. In the meanwhile, the 1st respondent/plaintiff filed I.A.No.563 of 2016 for temporary injunction to stop the construction which was being put up by the 1st petitioner under Green House Scheme.

3.It is further contended that the main contention of the 1st respondent/plaintiff is that the suit property belonged to one Late Subba Thevar who is the grandfather of the 1st respondent/plaintiff. Late Gurusamy Thevar and Siddharth Thevar who is the father of the plaintiff were co-brothers. After the death of Subba Thevar, these co-brothers inherited the suit property as legal heirs. Hence, the plaintiff has filed the present suit claiming partition right over the suit property and temporary injunction.

4.According to the learned counsel for the petitioners, the plaintiff had not produced any evidence to prove that the suit property belonged to Late Subba Thevar. However, the 1st respondent/plaintiff submitted a partition deed alleged to have been executed between himself and the 1st petitioner's husband on



01.04.1991 and that the said document is an unregistered document which consists of two pages. The first page of the stamp paper was purchased on 01.04.1990 and the 2nd page of stamp paper was purchased on 01.04.1991 and further, in the above document, survey number of the property, extent etc., have not been mentioned. It is also contended that the 1st petitioner will not put her thumb impression in the document, but the alleged partition deed shows the thumb impression of the 1st petitioner's husband.

5. Learned counsel for the revision petitioners has further contended that the revision petitioners have produced the documentary evidence relating to the suit property such as patta, electricity bill, house tax receipt and the order passed by the local authority under Green House Scheme. However, without considering the same, the learned Judge allowed I.A.No.563 of 2016 and granted temporary injunction till the disposal of the suit by the impugned order dated 12.09.2016. Aggrieved against the said order, this revision petition has been filed.

6. In support of his contention, learned counsel for the revision petitioners relied on the following judgments:-

i) Surya Dev Rai vs. Ram Chander Rai reported in AIR 2003 SC 3044.

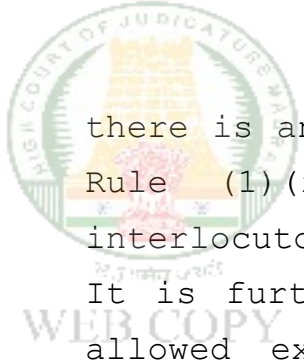
ii) Kishore Kumar Khaitan and another vs. Praveen Kumar Singh reported in 2006 (3) SCC 312.

iii) N. Maheswari vs. Mariappal and two others (CRP(NPD) 3487/2011 dated 24.09.2012)

iv) G. Selvam and others vs. Kasthuri and others (CRP(PD) 2984/2013 dated 10.07.2015)

v) Ramrameshwari Devi and others vs. Nirmala Devi and others (Civil Appeal Nos. 4912-4913 of 2011 dated 04.07.2011)

7. Learned counsel for the 1st respondent/plaintiff contended that the present civil revision petition is not maintainable since

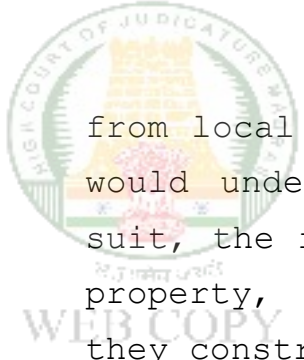


there is an alternative efficacious remedy of appeal under Order 43 Rule (1)(r) CPC against the impugned order passed in the interlocutory application filed under Order 39 Rules 1 and 2 CPC. It is further contended that unless interlocutory application was allowed ex parte or it is disposed of without following the principles of natural justice, the revision petition is not maintainable.

8. It is further submitted that I.A.No.563 of 2016 was contested by the revision petitioners. The respondent/plaintiff marked Exs.P1 to P7 and revision petitioners marked Ex.D1 to D8 and after considering the documents marked on either side, the learned Judge extended the interim order of status quo till the disposal of suit. While passing the said order, the learned Judge observed that if the defendants file their written statement, he would decide the main suit itself within a period of 2 months, whereas, the revision petitioners with an intention to drag on the proceedings filed written statement belatedly and filed this revision petition thereby prolonged the disposal of the suit. In support of his contention, he relied on the judgment in *Governing Council of American College vs. Dr.M.D.Christober* reported in 2010 (6) MLJ 172.

9. Heard the learned counsel for the petitioners and 1st respondent and perused the materials available on record. Despite service of notice, respondents 2 to 4 have not chosen to appear in person or through pleader.

10. Perusal of the records shows that the petitioners have obtained permission from the local body authority to construct a house under Green House Scheme by producing all the documents. The partition deed said to have been submitted by the respondent/plaintiff enclosed in the typed set of papers shows two different dates and it is an unregistered document. Admittedly, the revision petitioners are in possession of the suit property. The revision petitioners have obtained permission to construct house



from local body authority under Green House Scheme. The petitioner would undertake that if ultimately in the final disposal of the suit, the respondent/plaintiff is found to have right over the suit property, the petitioners will not claim any equity stating that they constructed house in the suit property.

11. Considering the facts and circumstances of the case, the order dated 12.09.2016 passed in I.A.No.563 of 2016 in O.S.No.185 of 2016 on the file of the Principal District Munsif Court, Srivilliputhur, Virudhunagar District, is set aside and the revision petitioners are permitted to proceed with the construction in the suit property. However, it is made clear that by virtue of said construction, the revision petitioners cannot claim any equity, if ultimately the respondent/plaintiff succeeds in the suit. The learned Judge is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Srivilliputhur,
Virudhunagar District.

+1cc to M/S.S.MAHALINGAM, Advocate SR.No.42722.
+1cc to M/S.S.MANICKAM, Advocate SR.No.42693.

order made in
CRP(PD) (MD) No.1782 of 2017
18.01.2018