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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018
(Reserved on 21.11.2017)

CORAM :

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

CRP(PD)(MD)No.2137 of 2016
and
CMP(MD)No.10007 of 2016

Chandran ... Petitioner/Petitioner/3rd Party

**vs.**

1)Chandran ... 1st Respondent/1st Respondent/Plaintiff
2)N.P.Raja ... 2nd Respondent/2nd Respondent/Defendant

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.08.2016 made in I.A.No.665 of 2013 in O.S.No.186 of 2010 on the file of Principal Sub Court, Tenkasi.

For Petitioner : Mr.J.Sulthan Basha

**ORDER**

This Civil Revision Petition has been filed against the fair and decreetal order dated 12.08.2016 made in I.A.No.665 of 2013 in O.S.No.186 of 2010 on the file of Principal Sub Court, Tenkasi.

2.The 1st respondent/plaintiff has filed a suit for specific performance against the 2nd respondent/defendant contending that the suit property belongs to the 2nd respondent and he entered sale agreement with the plaintiff and after entering into a sale agreement he did not come forward to execute the sale deed. The present petitioner has filed an impleading petition in I.A.No.665 of 2013 in the suit stating that the suit property originally belonged to his grandfather and therefore, he is entitled for half share in the suit property and therefore, he is a necessary party in the suit for deciding the *lis*. Originally, the property belonged to one Madasamy Nadar @ Ponnaiah Nadar. It was purchased by him in the year 1969 vide Document No.776/1969. The said Madasamy Nadar is the grandfather of the present petitioner. After his death, the property devolved upon the 2nd respondent by way of partition deed of the year 2000.

3.The case of the petitioner is that the 2nd respondent is his father and the petitioner alone has got the right to sell the property of his grandfather and the 2nd respondent has got no right.

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It is also contended that the petitioner's name is found in the Family Card and the exclusive right to sell the suit property only vests with the petitioner and not the father of the petitioner who is arrayed as 2nd respondent and he has got no right to enter into an agreement with the 1st respondent. It is stated that the petitioner came to know about the sale agreement dated 30.05.2008 only when the commissioner came to visit the property on 17.08.2013. It is also stated by the petitioner that there was no necessity for the 2nd respondent to sell the property and as per the Hindu Succession Act, the petitioner alone is having right over the suit property. In support of his contention, learned counsel for the petitioner relied on a judgment reported in 2009 (4) CTC 440 K.V.Ramasamy vs. K.V.Rahgavan and 3 others.

4.The 1st respondent through his counter has stated that the property has been purchased from the own income of the 2nd respondent's father and after his death on a registered partition deed, the 2nd respondent acquired right and with his income, he has constructed a house in the schedule property and it is the exclusive property of the 2nd respondent. Therefore, the petitioner cannot claim any right over the suit property stating that his name is found in the ration card. The 2nd respondent has got every right to sell the property and only to defeat the right of the 1st respondent, the 2nd respondent has induced his own son to implead himself as party respondent in the suit. When the suit was in the stage of arguments, the 2nd respondent has induced this petitioner to file impleading petition stating that the property is ancestral property where the petitioner alone has got right to sell the property.

5.Though the suit was filed in the year 2010, the present interlocutory application has been filed only in the year 2013 when the suit was posted for arguments. It is the admitted fact that the 2nd respondent's father purchased the property on his own income and the suit property has been devolved on the 2nd respondent by virtue of a registered partition deed and therefore, the suit property could be treated only as the exclusive property of the 2nd respondent.

6.Heard the learned counsel for the petitioner and perused the materials available on record.

7.Perusal of the records shows that the suit has been filed in the year 2010 and in 2013, the matter was posted for arguments. It appears that the 2nd respondent has induced the petitioner to file this petition at the stage of arguments. This has been filed only to protract the proceedings. The judgment relied on by the learned counsel for the petitioner is not applicable to the facts of this case. Considering the facts and circumstances of the case, the order passed by the learned Judge does not warrant any interference from this Court.

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Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

**To**

The Principal Subordinate Judge,
Tenkasi.

BALA
TE/KKR/SAR-4 : 30/01/2018 : 3P/2C

order made in
CRP(PD)(MD)No.2137 of 2016 and
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