



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:15.02.2018
CORAM

THE HONOURABLE MRs. JUSTICE S.RAMATHILAGAM

CRP(PD) (MD) .No.307 of 2011
AND
M.P. (MD) .No.1 of 2011

Thangamuthu ... Petitioner/Petitioner/Defendant

Vs.

1.E.Ravikumar

2.Minor Harish

(Represented by his father &
guardian 1st respondent)

... Respondents/Respondents 1 & 2/
Plaintiffs

3.M.Eswaramoorthy

4.Rani

5.Chitra

6.Rani

... Respondents/Respondents 3 & 4/
Defendants 2 & 3

PRAYER: Civil Revision Petition filed under article 227 of the Constitution of India, to set aside the Fair order and Decreetal order, dated 09.11.2010 in I.A.No.315 of 2010 in O.S.No.108 of 2010 on the file of the Sub Court, Palani.

For Petitioner : Mr.R.Vijayakumar
For R1 and R2 : Mr.S.Anand Chandrasekar
for Sarvabhauman associates

O R D E R

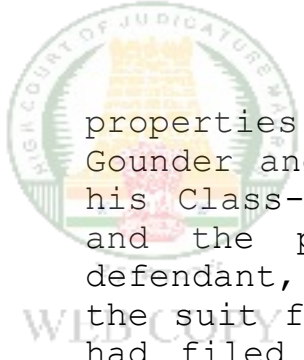
The Civil Revision Petition has been preferred against the fair and decreetal order passed in IA.No.315 of 2010 in O.S.No.108 of 2010, on the file of the Sub Court, Palani.

2.The brief facts of the case are as follows:

The suit in O.S.No.108 of 2010 was filed for partition with regard to their 1/6 share in the suit properties. Since the 1st plaintiff was not added in the partition deed dated 17.10.1988, the 1st plaintiff filed the suit. The defendants 1,3 and 4 have filed I.A.No.315 of 2010 to reject the plaint filed by the plaintiffs. After perusing the records, the trial Court has dismissed the petition. Against which this Civil Revision Petition is filed.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel for the petitioners submitted that the



properties are self acquired properties of the deceased Muthusamy Gounder and hence on his death, the properties would devolve upon his Class-I heirs, as per Section 8 of the Hindu Succession Act and the plaintiffs, being son and grand son of the second defendant, cannot inherit when the second defendant is alive and the suit for partition is not at all maintainable. The petitioner had filed I.A.No.315 of 2010 to reject the plaint filed by the plaintiffs in O.S.No.108 of 2010. The said petition was dismissed. The learned counsel for the petitioner prays for setting aside the order of the court below.

4.The learned counsel appearing for the respondents 1 and 2 submitted that by accepting the suit proceedings, the defendants have filed their written statement. After filing the written statement, the defendants have come forward with this Civil Revision Petition and therefore, he prays for dismissal of this petition.

5. Heard both sides and perused the materials available on record.

6.I.A.No.315 of 2010 was filed by the defendants 1,3 and 4 stating that the suit property was purchased by their father one Muthusamy Gounder and already on 17.10.1988 and 04.08.1997, partition was effected and the properties were allotted to the respective parties and they cannot say that the partition already effected is not binding on them. Hence, the defendants 1, 3 and 4 have filed the petition to reject the plaint filed by the plaintiffs. A counter statement was also filed. The trial court, after analysing the facts stated in the petition and also in the counter statement, has held that as to whether it is the self acquired property of the Muthusamy Gounder or it is a joint family property will be decided only at the time of trial and it may not be decided at this stage and dismissed the petition.

7. On considering the facts and circumstances of the case and upon hearing both sides, I find no error in the order of the court below, which does not warrant interference by this Court. However, considering the nature of the suit, this Court directs the learned Subordinate Judge, Palani, to dispose of the suit in O.S.No.108 of 2010 as expeditiously as possible. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/



To

The Subordinate Judge, Palani

Copy to :

The Section Officer,
V.R.Section, (2 copies),
Madurai Bench of Madras High Court, Madurai.

cm

KK/KKR/SAR 3/17.05.2018/3P/4C

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