



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P.(PD)(MD)No.1210 of 2013

and

M.P(MD)Nos.1 of 2013

Muthulakshmi :Petitioner / Petitioner / 5th Defendant

vs.

Periya Perumal :Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for records and set aside the order of dismissal dated 07.03.2013 in I.A.No.1 of 2013 in O.S.No.14 of 2009 by the learned 3rd Additional Subordinate Judge, Madurai.

For Petitioner :Mr.J.Barathan

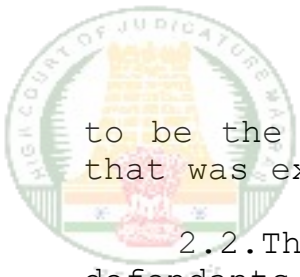
For Respondent :Mr.Babu Rajendran

ORDER

This Civil Revision Petition is directed against the order passed by the learned 3rd Additional Subordinate Judge, Madurai in I.A.No.1 of 2013 in O.S.No.14 of 2009, dated 07.03.2013.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The respondent herein, as plaintiff, filed the suit in O.S.No.14 of 2009 before the 3rd Additional Subordinate Court, Madurai, for partition of 1/2 share in the suit property and for permanent injunction restraining the defendant from alienating or encumbering the suit properties till the plaintiff takes delivery of her share in the suit property. The suit property has been described as items 1 to 8. Insofar as item 7 of the suit schedule is concerned, it is a property in S.No.150/3 measuring an extent of 1 acre and 3-2/3 cents out of 2 acres and 70 cents. The plaintiff specifically pleaded that out of that total extent of 2 acres 70 cents belonged to the plaintiff's father, his father executed a Will on 17.04.1977 in respect of an extent of 1 acre and 66-1/3 cents to the plaintiff. It is, therefore, the plaintiff has admitted his father's ownership in respect of entire extent of 2 acre 70 cents in S.No.150/3. At the same time, the plaintiff has set up a Will alleged to have been executed by his father in his favour in respect of an extent of 1 acre 66-1/3 cents in S.No.150/3, namely, item 7 in the suit schedule. Therefore, item 7 in the suit schedule is stated

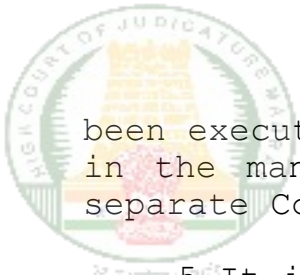


to be the property that is available for partition after the Will that was executed in favour of the plaintiff.

2.2. The revision petitioner / 5th defendant along with defendants 3, 6 and 7 filed a written statement specifically denying the execution of the Will. The 5th defendant in the suit filed an interlocutory application in I.A.No.1 of 2013 in O.S.No.14 of 2009 for amendment of plaint to include item 9 in the suit schedule, which is nothing, but the remaining portion of the suit property in S.No.150/3, which is allegedly bequeathed in favour of the plaintiff, as per the plaint. It is open to the defendant to seek partition in respect of any other property, which is not included in the property by paying separate Court fee. The defendants have paid Court fee claiming 1/7 share in respect of 1 acre 66-1/3 cents. The defendants may succeed, if their claim is accepted. Hence, plaintiff himself admitted that he has no objection for the Court for giving 1/7 share in respect of the entire extent in S.No.150/3. The trial Court, however, dismissed the said petition stating that the amendment will not only change the character of the suit, but also will change the character of another suit in O.S.No.363 of 2008 Aggrieved by the same, the 5th defendant has preferred the above Civil Revision Petition.

3. The only apprehension for the revision petitioner appears to be that the item 7 of the suit property does not disclose the full extent of the property owned by the father of the plaintiff and the defendants. Since a substantial portion of the suit property in S.No.150/3 is omitted in the suit for partition, the defendants may lose their rights in the remaining property, which is not included in suit. The apprehension, though, appears to be genuine, this Court does not see any merits in such contention. It is well settled that in a suit for partition, the plaintiff and the defendants, who are co-owners, may seek appropriate relief without showing them as plaintiffs. In other words, it is open to the defendants to give a list of properties and seek partition after paying Court fee. The defendant can also be treated and deemed to be the plaintiff to claim partition in respect of all the properties. In this case, the plaintiff himself has admitted that the defendants are entitled to claim their right in respect of remaining portion of the suit property in S.No.150/3, in case they succeed in their case without an amendment of plaint.

4. In the suit filed by the plaintiff, the 5th defendant cannot compel the plaintiff to include an item, which according to the defendants, is not included in the plaint schedule. However, it is open to them to seek partition in respect of any other properties. In such circumstances, the order passed by the learned 3rd Additional Subordinate Judge, Madurai, in I.A.No.1 of 2013 in O.S.No.14 of 2009, dated 07.03.2013 is confirmed. However, the trial Court will grant a relief to the revision petitioner in respect of the entire extent in S.No.150/3 in Sempatti Village, Usilampatti Taluk, namely, an extent of 2 acre and 70 cents in case, the Will alleged to have



been executed by the father in favour of the plaintiff is not proved in the manner known to law provided the revision petitioner pays separate Court fee for declaration of his share.

5. It is brought to the notice of this Court that apart from the Suit in O.S.No.14 of 2009 on the file 3rd Additional Subordinate Judge, Madurai, few other suits are also pending in relation to the property of the joint family. In such circumstances, the learned Counsel on either sides requested this Court to give appropriate direction to the lower Court to dispose of the suits at the earliest. Accordingly, the 3rd Additional Subordinate Judge, Madurai is directed to expedite the trial in O.S.No.14 of 2009 and the other connected suits and dispose of the suits as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. As a result, this petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar(CS-III)

To

- 1.The 3rd Additional Subordinate Judge, Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.T.R.JEYAPALAM, Advocate, SR.No. 74528
+1cc to Mr.BABU RAJENDRAN, Advocate, SR.No. 74169

C.R.P. (PD) (MD)No.1210 of 2013
20.07.2018

CMR
KK/TE/RP/SAR-3/13.08.2018/3P-6C/