

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM

THE HONOURABLE **Mr.JUSTICE N. SATHISH KUMAR**

C.R.P.PD.No.3344 of 2013
and M.P.No.1 of 2013

Sundarraaj

... Petitioner

Vs

1. Saroja

2. Sureshraj

3. Indira W/o.Balakrishnan

4. Minor Dhivyabarathi D/o. Balakrishnan

5. Minor Dhieshkumar S/o. Balakrishnan

6. Minor Deepa D/o.Balakrishnan

7. Malayan

8. Prekashraj

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed by the Sub-Court at Gingee in I.A.No.180/2013 in O.S.No.3/2007 dated 04.06.2013.

For Petitioner : Mr.X.Selvam Soundar

For Respondents : Mr.G.Rajan for R1

: No appearance for R2 to R8.

ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed by the Sub-Court at Gingee in I.A.No.180/2013 in O.S.No.3/2007 dated 04.06.2013.

2. The suit has been filed for partition and two items of the properties sought to be amended on the basis of the evidence of DW1. In the proof affidavit, DW1 has categorically stated that these items could not be included in the suit property at this stage. The Interlocutory Application has been filed to include two properties in the suit schedule.

3. The Trial Court after considering the entire pleadings and also having regard to the fact that the suit has been filed for partition, allowed the application, against which, the present revision is filed by the first defendant.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

5. The suit is filed for partition and separate possession. The defendants have taken defence at the time of filing proof affidavit

that the properties are self acquired properties and they are not meant for partition. It is stated in the proof affidavit that two items have been specifically included in the suit property. The Interlocutory Application has been filed by the plaintiff before the Trial Court, stating that she has no knowledge about the properties and their survey numbers which are left out in the plaint schedule. The Trial Court allowed the application in order to avoid multiplicity of proceedings and permitted the plaintiff to carryout the amendment in the plaint.

6. This Court is of the view that since the suit is filed for partition, it is the defence case of the defendants that those properties are self acquired properties and it cannot be brought under the partition. The defendants can very well establish their case during the course of trial by filing additional statement with regard to the properties which are included in the amendments. Hence, this Court does not find any illegality or perversity in the order passed by the Trial Court.

7. Accordingly, the civil revision petition is dismissed and liberty is granted to the defendants to file an additional written statement with regard to the above properties which are newly

N. SATHISH KUMAR,J.

Msv

included in the plaint schedule. The Trial Court shall receive the additional written statement if any is to be filed by the defendants. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

Speaking order : Non-speaking order

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