

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.07.2018**Pronounced on : 04.06.2019**

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**C.R.P.(PD)No.1913 of 2018 and
C.M.P.No.11079 of 2018

T.Khanna

.... Petitioner

Vs.

1. T.Balasubramanian
2. S.Usharani
3. T.Sridevi
4. R.Selvi
5. R.Vijayarani
6. Jayalakshmi
7. K.Saravanan
8. M.Gopalakrishnan

...Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 16.04.2018 made in I.A.No.13618 of 2017 in O.S.No.9397 of 2006 on the file of the VIII Assistant City Civil Court at Chennai.

For Petitioner : Mr.G.Ilangovan

For Respondents : Mr.M.Guruprasad for R7
& R8/Caveators**ORDER**

The petitioner and respondents 1 to 6 are brothers and sisters.

The petitioner demanded his share and amicable partition of the suit

property from his brothers and sisters namely the respondents 1 to 6 and also offered to by shares of the respondents 1 to 6 and they refused to do so. Therefore the petitioner filed a suit against the respondents 1 to 6 for partition in O.S.No.9397 of 2006, before the VIII Assistant Judge, City Civil Court, Chennai. During pendency of the suit, the respondents 1 to 6 had sold their undivided 6/7th shares to respondents 7 and 8 without knowledge and consent of the petitioner. Therefore the petitioner filed an interlocutory application under Section 4 of the Partition Act, to issue a direction with default clause, directing the respondents 7 and 8 to sell the 6/7th undivided shares in the suit schedule property which is more fully described in the schedule for the price that being fixed by the Court below and execute necessary sale deeds with possession to and in favour of the petitioner. The learned Judge, after hearing both the parties, by order dated 16.04.2018, dismissed the petition, against which the petitioner is before this Court with the present civil revision petition.

2 According to learned counsel appearing for the petitioner/plaintiff, the suit property is undivided family dwelling house and the petitioner sought partition and amicable settlement between the respondents 1 to 6, who are his brothers and sisters and also

offered to buy their shares. Since, they were not allowed the same, the petitioner filed a suit for partition. Pending the suit, the respondents 1 to 6 had sold their undivided 6/7th share to the respondents 7 & 8 without even informing the petitioner. Respondents 1, 3 and 6 sold their undivided shares in favour of 7th respondent by way of sale deeds under Document Nos.1326/2007 dated 12.03.2007 and 6197/2007 dated 23.11.2007. The respondents 2, 4, and 5 sold their undivided shares in favour of the 8th respondent by way of sale deeds under Document Nos.1633/2008 dated 24.03.2008 and 1606/2008 dated 20.03.2008. Therefore the petitioner filed an interlocutory application under Section 4 of Partition Act. The learned counsel would further submit that the respondents 7 & 8, who are strangers to the suit property, had deployed nearly 35 persons consisting many families and created nuisance and hardship to the petitioner. The suit schedule property is a family dwelling house and the petitioner is having preemptive right by virtue of Section 4 of Partition Act and Section 44 of the Transfer of Properties Act. The respondents 1 to 6 ought to have sold their shares to the petitioner. Further preemptive right can be claimed by the co-sharer at any stage of the suit. The respondents 1 to 6, in order to harass the petitioner, had sold their undivided 6/7th share to the respondents 7 & 8 and by

using them, has been creating nuisance and hardship to the petitioner with an intention to throw away the petitioner from the suit property. The respondents 7 & 8 have no legal right to claim or take joint possession of the suit property along with the petitioner. The trial Court has failed to consider the fact that Section 4 of Partition Act enables the petitioner to purchase shares of other share holders and retain the entire possession. Therefore, the order dated 16.04.2018 made in I.A.No.1361 of 2017, warrants interference.

3 Per contra, the learned counsel appearing for the respondents would submit that the application filed by the petitioner itself is not maintainable, unless the rights and entitlement of the parties to the suit is determined and the same attained finality. Therefore the application filed by the petitioner under Section 4 of the Partition Act is a pre-mature. The petitioner filed the present suit only for partition and not for anything else. Therefore, the respondents are entitled to sell their shares and nothing will prevent them from doing so. The question of preemptive right would arise only when the purchaser of the properties i.e. the strangers filed the suit for partition to divide his share over the property. In support of his contentions, the learned counsel relied on the decision rendered by the Hon'ble

Supreme Court reported in **(2008) 8 Supreme Court Cases 330 (Gautam Paul vs. Debi Rani Paul and others)**. The Court below by appreciating the evidence rightly, dismissed the application, which does not call for any interference.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 It is seen that the petitioner, who is brother of respondents 1 to 6, demanded his share and amicable partition of the suit property and also offered to by shares of the respondents 1 to 6 and they refused to do so. Therefore the petitioner filed a suit against the respondents 1 to 6 for partition and during pendency of the suit, the respondents 1 to 6 had sold their shares to respondents 7 and 8 without knowledge and consent of the petitioner. Therefore the petitioner filed an interlocutory application under Section 4 of the Partition Act, to direct the respondents 7 and 8 to sell the 6/7th undivided shares in the suit schedule property. The learned Judge, passed an order of dismissal of the application, which is impugned in this revision . It is contended by the learned counsel for the petitioner that Section 4 of Partition Act enables the petitioner to purchase

shares of other share holders and retain the entire possession and hence the respondents 1 to 6 ought to have sold their shares to the petitioner and the petitioner has preemptive right over the property. On contrary, the learned counsel appearing for the respondents argued that the question of preemptive right would arise only when the purchaser of the properties i.e. the stranger filed suit for partition to divide his share over the property. It is useful to extract Section 4 of Partition Act, which reads as follows:

"4. Partition suit by transferee of share in dwelling house: (1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf"

6 From the above, it is clear that when the purchaser i.e. stranger, who purchased the family dwelling house, from one of the co-owners, filed a suit for partition against the other co-owners, then only claim of preemptive right by other co-sharer would arise. In the present case, it is only the petitioner, who is a co-sharer, filed the suit against other co-sharers i.e. respondents 1 to 6. Therefore, the above

section will not be useful to the petitioner claiming preemptive right over the suit schedule property.

7 This Court does not find any illegality or infirmity in the order passed by the trial Court in holding that the petitioner cannot claim preemptive right, when he filed a suit for partition. However, it is made clear that if the third party purchaser file a suit for partition and separate possession from the suit dwelling house, at that stage the revision petitioner is at liberty to file a petition claiming preemptive right over the suit property.

8 In the result, the civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

04.06.2019

Index: Yes/No

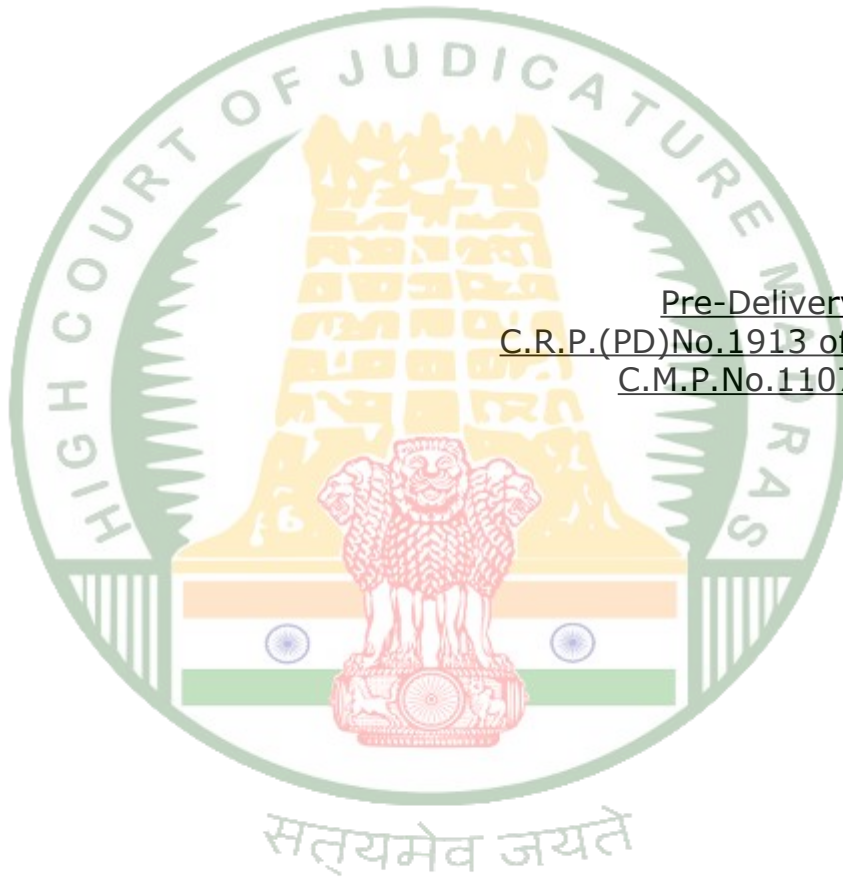
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To

The VIII Assistant Judge, City Civil Court, Chennai.

P.VELMURUGAN, J.,

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Pre-Delivery Order in
C.R.P.(PD)No.1913 of 2018 and
C.M.P.No.11079 of 2018

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