

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD)No.1391 of 2019

and

CMP.No.9138 of 2019

1.K.Lakshmi

2.P.Durai

3.P.Srinivasan

4.P.Arumugam

5.P.Punniadevan

... Petitioners

Vs.

1.P.Subramani

2.The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Chennai – 600 005.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order passed by the 1st Additional Judge, City Civil Court, Chennai dated 01.02.2019 made in I.A.No.13924 of 2018 in O.S.No.11628 of 2010.

For Petitioners : M/s.Liagat Ali

ORDER

The Civil Revision Petition has been filed to set aside the order passed by the 1st Additional Judge City Civil Court, Chennai dated 01.02.2019 made in I.A.No.13924 of 2018 in O.S.No.11628 of 2010.

2. The petitioners are the plaintiffs. They originally filed a suit for partition and injunction restraining the first respondent from putting up further construction. The first respondent filed a written statement stating that item 1 of the suit property is not liable for partition, as it was allotted by the second respondent in his favour. Thereafter, the petitioners amended the prayer to the one for declaration of the allotment made in favour of the first respondent as null and void and for partition of the property. Since they were not in possession of the allotment order, they filed a petition before the trial Court to direct the second respondent to produce the allotment order. The trial Court, has found that the allotment order was made with the consent of the petitioners in favour of the first respondent.

3. The learned counsel for the petitioners would contend that the second respondent, being the statutory body, should produce the allotment order facilitating the petitioners to prove their case. Admittedly, the prayer sought for is to declare the allotment order dated 03.06.1997 as null and void. Such amendment should have been made after producing the order before this Court. But it appears that the petitioners

have not seen the order. Only based on the written statement, they have amended the plaint. Now that, they seek the second defendant to produce the allotment order to prove the case. In the case for partition, the burden is on the plaintiff to prove that suit properties are liable for partition and he cannot expect the defendants to produce the documents to elicit his right. Secondly, in the written statement the first respondent had made a categorical statement that Item no.1 of the suit property is allotted in his favour and he is the absolute owner. In that case, the burden of proof is upon him to prove that he is the absolute owner and the property is not liable for partition. Further, it is open to the petitioners to summon the second respondent to produce the documents at the time of trial by issuing subpoena. Having failed to do so, when the matter is posted for argument, the arguments made by the petitioners appears to be one of the protracting the proceeding. The trial Court has rightly dismissed the application. This Court does not find any discrepancy in the order. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

Speaking Order/Non Speaking Order

M. GOVINDARAJ, J.

bri

To

1. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamaraj Salai,
Chennai – 600 005.
2. The I Additional Judge,
City Civil Court, Chennai.



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