

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.07.2019**

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) No.2412 of 2019

and

C.M.P.No.15783 of 2019

Ramar

: Petitioner

Vs.

P.Padmini

: Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair order passed in I.A.No.653 of 2018 in O.S.No.291 of 2013, dated 01.02.2019 on the file of the learned First Additional Subordinate Judge, Salem District.

For Petitioner

:

Mr.S.Udayakumar,

For M/s.Karan and Uday

This Civil Revision Petition is directed against the order dated 01.02.2019 made in I.A.No.653 of 2018 in O.S.No.291 of 2013, on the file of the learned First Additional Subordinate Judge, Salem.

2. The revision petitioner is the defendant in the suit in O.S.No.291 of 2013.

The respondent, who is the sister of the revision petitioner, filed a suit for partition.

The revision petitioner/defendant examined two witnesses on his side. However, an endorsement was made by the junior advocate that there is no further evidence on the side of the defendant. However, on application by the defendant, the suit was

re-opened and it was posted for defendant's side evidence. At that stage, the revision petitioner/defendant filed an application to summon the Tahsildar, Yercaud, and the then Village Administrative Officer, Kuppanur Village, and the Branch Manager of Salem Co-operative Primary Agricultural and Rural Development Bank, to prove the fact that the loan was discharged by him and that the respondent/plaintiff had given her consent for transfer of patta in favour of the revision petitioner/defendant. The Trial Court considered the application and found that the request for summoning the Tahsildar with regard to transfer of patta can be allowed and in view of the appearance of Tahsildar, the evidence of Village Administrative Officer, is not necessary. The Trial Court has also considered the fact that the suit is for partition and the No Objection Certificate issued by the plaintiff will not alter the title and dismissed the application for summoning the Branch Manager of Co-operative Bank, thus, allowed the application in part. Aggrieved over the same, the revision petitioner is before this Court with the present Civil Revision Petition.

3. According to the petitioner, the respondent has relinquished her share by virtue of the letter produced before the Branch Manager and, therefore, examination of the Branch Manager is very much essential. The dismissal of the application to summon the Branch Manager would seriously prejudice the rights of the revision petitioner. Therefore, he would contend that the order passed by the Trial Court needs to be interfered with.

4. I have considered the submissions.

5. The suit is for partition. The petitioner/defendant has examined two witnesses on his side. In a suit for partition, it is always open to the defendant to disprove the claim of the plaintiff that she is entitled to partition. Whether property is liable for partition or not?, whether the plaintiff has a right over the property? or whether the plaintiff is entitled to a share?, can be proved by the oral and documentary evidence. The Trial Court has rightly considered the factum of transfer of patta in favour of the petitioner and to prove his possession, the evidence of Tahsildar would be relevant. But, by summoning the Branch Manager of the said Co-operative Bank, the petitioner can only prove that a latter was executed by the plaintiff authorizing the defendant to discharge the loan and collect the original documents. The letter by itself will not convey title to the property in favour of the revision petitioner. For that purpose, the evidence of the Branch Manager will not be of any use. The petitioner is liable to prove his title by appropriate oral and documentary evidence. Therefore, consideration by the Trial Court that the evidence of Branch Manager will not in anyway assist the Court in coming to a conclusion is correct and justified. Therefore, the order passed by the Trial Court does not warrant any interference at the hands of this Court. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.07.2019

Index: Yes/No

Internet: Yes/No

CRP (PD) No.2412 of 2019

M.GOVINDARAJ, J.

SML/bkn

To

The First Additional Subordinate Judge,
Salem.



Order made in

C.R.P.(PD) No.2412 of 2019

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