



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM:

WEB COPY

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P. (PD) (MD) .No.1894 of 2011

M.P. (MD) .No.1 of 2011

1.Seeniammal
2.Vinoth
3.Arulpandi
4.Sundarraaj
5.Arumugaraj
6.Padmavathi
7.Devi

.. Petitioners/Respondents 1 to 7

Vs.

1.Prince Maniraj
2.Vasanth Packiyaraj
3.Pushpavalli Bella
4.Vasantha Kumari

.. Respondents 1 to 4/Petitioners 1 to 4

Ganapathy Nadar (Died)

..5th petitioner/3rd defendant

5.Subramanian
6.Thangam
7.Hitlar
8.Stalin
9.Palavesam Ammal
10.Subbiah Konar
11.Veerakumar
12.Tirumalaiyammal
13.Subbulakshmi
14.Kumaravel
15.Kumari
16.Pappammal
17.Bagya Lakshmi
18.Saraswathi
19.Janaki
20.Kani
21.Esakkiammal
22.Chellammal
23.Maniyalagan
24.Subbukutti
25.K.Suresh

.. Respondents 5 & 6/Respondents 8 & 9

.. Respondents 7 to 16/Respondents 10 to 29



Vaithiyalinga Nadar (Died) .. 30th Respondent/1st Plaintiff

(Respondents 5 to 24 and 26 are set exparte in the lower Court, hence notice to them may dispense with)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.75 of 2011 in O.S.No.115 of 2009, dated 30.06.2011 on the file of the Additional District Court (Fast Track Court No.II), Tirunelveli.

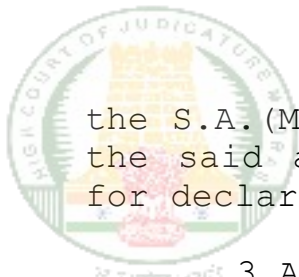
For Petitioners : Mr.H.Arumugam

For Respondents : Mr.R.Manimaran for R1 to R4
No Appearance for R25

ORDER

The plaintiffs in the suit O.S.No.115 of 2009, who are Vaithiyalingam Nadar and his legal heirs (after his demise), have filed the suit for partition and separate possession of their 74 cents from out of total extent of 1 acre and 76 cents in S.No.339/2, Alangulam Village, Tirunelveli District. Prior to the filing of the suit, a suit O.S.No.69 of 2003 was filed by one Pushparani against the first plaintiff in the suit O.S.No.115 of 2009. The said Pushparani has been arrayed as the 29th defendant in the suit O.S.No.115 of 2009. The said Pushparani had filed the suit O.S.No.69 of 2003 for declaration and injunction in respect of 44 cents in the above said S.No.339/2. In the said suit, Vaithiyalingam Nadar and defendants 2 and 3 therein had filed a counterclaim for partition and separate possession of their northern 88 cents in the total extent of 1 acre and 76 cents. The said suit as well as the counterclaim were dismissed on the ground of non joinder of necessary parties. The appeal also ended in dismissal with the very same observation and it is stated that the said proceedings are now pending on the file of this Court in S.A.No.(MD).No.2 of 2011.

2.After the dismissal of the first appeal by the Sub Court, Tenkasi, the said Vaithiyalinga Nadar along with his children namely the revision petitioners herein had filed the suit O.S.No.115 of 2009 for partition impleading all the parties. Pending the suit, the respondents 1 to 4 herein moved an application under Section 10 of the Code of Civil Procedure for stay of the suit O.S.No.115 of 2009, since the subject matter of the said suit was very much in issue in the second appeal pending before this Court namely S.A.(MD).No.2 of 2011 and therefore, the further proceedings were sought to be stayed till the disposal of



the S.A.(MD).No.2 of 2011. The revision petitioners had countered the said application by contending that the earlier suit is one for declaration and the subject matter is totally different.

3.After hearing both parties, the learned Additional District Judge (Fast Tract Court No.II), Tirunelveli, was pleased to allow the petition and grant stay. Challenging the said order, the revision petitioners/plaintiffs are before this Court.

4.Heard the counsels on either side.

5.Perusal of the records show that in the counterclaim in O.S.No.69 of 2003 on the file of the Additional District Munsif, Tenkasi, the revision petitioners particularly, the first plaintiff had sought for a partition of 88 cents in the very same suit survey number totally measuring 1 acre and 76 cents. Therefore, the subject matter of the suit O.S.No.69 of 2003 is very much the subject matter of the suit O.S.No.115 of 2009 now pending on the file of the Additional District Court (Fast Tract Court No.II), Tirunelveli. The suit was dismissed and the counterclaim was also dismissed on the ground of non joinder of necessary parties and in the appeal, the suit decree was confirmed. It is now the subject matter in S.A.(MD)No.2 of 2011. Therefore, the result in S.A.(MD).No.2 of 2011 would definitely have a bearing on the suit O.S.No.115 of 2009.

6.Section 10 of the Code of Civil Procedure would read as follows:

"10. Stay of suit— No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

7.The subject matter now pending in appeal before this Court in S.A.(MD).No.2 of 2011 as well as parties are the same in the suit O.S.No.115 of 2009 except for the newly added parties. Therefore, I do not find any infirmity in the order passed by the learned Additional District Judge (Fast Track Court No.II), Tirunelveli.



8.The civil revision petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

TM

To

1.The Additional District Court
(Fast Track Court No.2)
Tirunelveli

2.The Section Officer,-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. MANIMARAN, Advocate (SR-85206[F] dated 05/09/2019)

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-85231[F] dated 05/09/2019)

C.R.P. (PD) (MD) .No.1894 of 2011

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