



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

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C.R.P (MD)No.397 of 2012

and

M.P (MD)No.1 of 2012

1.Palaniammal
2.Chandrasekar
3.Rajendran
4.Vaiyapuri
5.Baluchamy

...Petitioners/Respondents 6 to 10/
Respondents 1 to 5

Vs.

1.P.Subramanian
2.Subramani
3.Saraswathy
4.Ramasamy
5.Subramanian

... 1st Respondent/Petitioner/
6th Respondent

... Respondents 2 to 5/
Respondents 2 to 5/
Appellants 2 to 5

6.Sellammal

... 6th Respondent/
11th Respondent/
7th Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the order dated 30.06.2011 made in I.A.No.153 of 2011 in A.S.No.72 of 2010 on the file of the Additional Subordinate Judge, Karur.

For Petitioners : Mr.S.Parthasarathy

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 30.06.2011 made in I.A.No.153 of 2011 in A.S.No.72 of 2010 on the file of the Additional Subordinate Judge, Karur.

2. One deceased Rasayee Ammal and the respondents 2 to 6 herein filed a suit in O.S.No.61 of 2006 on the file of the District Munsif Court, Karur, seeking the following relief:

"(a) to divide the suit property into 5 equal shares by metes and bounds according to the good and bad nature of the soil and to allot three shares to



*the plaintiffs with separate possession thereon;
(b) awarding the cost of this suit, and
(c) granting such other and further reliefs
as this Hon'ble Court may deem fit and proper in the
nature and circumstance of the case and thus render
justice."*

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3. After contest, the trial Court, by judgment and decree dated 29.03.2010, dismissed the said suit. Aggrieved thereby, the respondents 2 to 5 herein filed an appeal in A.S.No.72 of 2010 on the file of the Additional Subordinate Court, Karur. During the pendency of the said appeal, the first respondent herein/sixth defendant filed an interlocutory application in I.A.No.153 of 2011 in A.S.No.72 of 2010 seeking to delete the first item of the suit property from the description of properties to the said appeal and the first appellate Court by order dated 30.06.2011 allowed the said application. Challenging the same, the present Civil Revision Petition has been filed.

4. Heard the learned Counsel for the petitioners. Despite the notice served on the respondents, there is no representation on behalf of them.

5. On perusal of the materials available on record, it is seen that the suit for partition was dismissed, against which, the appeal in A.S.No.72 of 2010 had been filed and during the pendency of the said appeal, the first respondent herein/sixth defendant had filed an application seeking to delete the first item of the suit property from the description of properties to the said appeal on the ground that he along with the parties to the suit had jointly sold the first item of properties to one C.N.Thangavel through a registered sale deed dated 25.01.2011 and hence, there is no necessity to include the said item of properties in respect of the relief of partition and that the objection raised by the fifth petitioner herein/fifth defendant was not accepted and accordingly, the first appellate Court ordered for deletion of first item of suit property mentioned in the Memorandum of Appeal.

6. It is brought to the notice of this Court that the appeal in A.S.No.72 of 2010 was also dismissed for non-prosecution on 24.03.2010. Further, it is submitted that when the suit property has been sold during the pendency of the suit or appeal, the purchaser who purchased the property will have to be impleaded as party to the suit or appeal and deleting an item from the schedule of property is not a correct procedure.

7. In the considered opinion of this Court, the first appellate Court had not given any reasons to allow the said interlocutory application seeking to delete the first item of property from the schedule of properties, except that the suit was



already dismissed. Once the suit was dismissed, the enjoyment and other benefits due to the defendants would continue.

8. As rightly pointed out by the learned Counsel for the petitioners herein, when the appeal suit has been dismissed for non-prosecution, there is a possibility for seeking restoration which may or may not be granted by the Court and that there is no need for adjudication of this civil revision petition as the original judgment and decree in O.S.No.61 of 2006 had been restored. The first appellate Court by passing the order in I.A.No.153 of 2011, has given a rise to one other litigation instead of making the purchaser as a party respondent in the matter which is in subjudice.

9. Since the appeal suit has been dismissed for non-prosecution as stated supra, there is no need for adjudication of this civil revision petition for the present. In case, the appeal suit in A.S.No.72 of 2010 is restored, it is open to the Court below to implead the purchaser of the schedule mentioned property and hear the matter as this Court is of the view that the deletion of the first item of property in the schedule of properties is not correct.

10. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rsb

To

The Additional Subordinate Court,
Karur.

+1 CC to Mr.S. PARTHASARATHY, Advocate (SR-102281[F] dated 28/11/2019)

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MK (09.01.2020) 3P 3C