



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 25.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2409 of 2015

and

M.P. (MD) No. 3 of 2015

1. Vijaya
2. Muthiah
3. Balamurugan

.. Petitioners

Vs.

1. Sundararaj
2. Parvathi @ Packiyam
3. Muthulakshmi

.. Respondents

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.02.2015 passed in I.A.No.1403 of 2011 in O.S.No.155 of 2009 on the file of the Principal District Munsif Court, Srivilliputhur.

For Petitioners

: Mr.S.Alagusundar

For Respondents

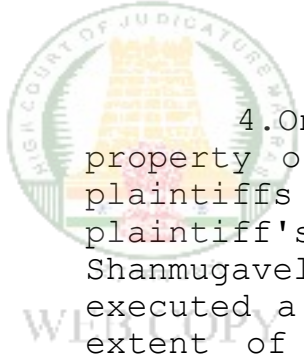
: Mr.M.Ashok Kumar

ORDER

Heard Mr.S.Alagusundar, learned counsel appearing for the petitioners and Mr.M.Ashok Kumar, learned counsel appearing for the respondents.

2.This Civil Revision Petition is filed against the order passed in I.A.No.1403 of 2011 in O.S.No.155 of 2009 dated 13.02.2015 on the file of the Principal District Munsif Court, Srivilliputhur.

3.The petitioners herein are the proposed defendants 2 to 4, the respondents 1 and 2 herein are the plaintiffs and the third respondent herein is the first defendant in the suit. The respondents 1 and 2 have filed a suit in O.S.No.155 of 2009 for partition. The petitioners herein has filed a petition in I.A.No.1403 of 2011 to implead themselves as the defendants 2 to 4 in the suit. The petition was dismissed by the trial Court. Against which, the petitioner has preferred this revision petition.



4. On the side of the petitioners, it is stated that the suit property originally belonged to one Shanmugavel and Govindan. The plaintiffs are the legal heirs of Govindan. On 27.08.1992, the plaintiff's father executed a settlement deed in favour of Shanmugavel who is the father of the petitioners. The said Govindan executed a sale deed in favour of Shanmugavel on 29.08.1984 for an extent of 40 cents. In the plaint itself, the plaintiffs have admitted this two transaction and the remaining 2 cents is the first schedule property.

5. On the side of the petitioners, it is stated that the petitioners' father Shanmugavel got a lease hold right over the first schedule property and lease deed dated 30.08.1995 and 17.09.1997 are available. The petitioners' claim is that subject to the payment of mortgage amount, the petitioners have no objection in partitioning the first schedule property.

6. On the side of the petitioners, it is further stated that the said Govindan who is the plaintiffs' father has executed a sale deed on 27.08.1992 with regard to the second schedule property and hence, the petitioners are to be impleaded as the defendants 2 to 4 in the suit.

7. On the side of the respondents, it is stated that the suit is filed only for a relief of partition. The petitioners are not the legal heirs of Govindan and they are not necessary parties in the suit and the description of the property in the sale deed dated 27.08.1992 and the second schedule property are different. The door number, extent and boundaries are different and the document filed by the petitioners is not pertaining to the second schedule property.

8. A perusal of the records reveals that the trial Court dismissed the petition on the ground that no document is marked on the side of the petitioner to prove their claim before the trial Court. The petitioner has filed a xerox copy of the document with regard to the second schedule properties. No documents are filed to prove the claim of lease hold right over the first schedule property. A perusal of the xerox copy of the document for the second schedule property reveals that there is difference regarding the survey number and the western and northern boundaries. Since there are some discrepancies in the description of property, an opportunity for the petitioners to prove his petition before the trial Court is to be given.

9. In the above circumstances, this Court deems it fit to remand back the matter to the file of the learned Principal District Munsif, Srivilliputhur for fresh consideration after giving opportunities for both sides to produce necessary document and then to dispose the I.A. petition.

10. With the above direction, this Civil Revision Petition is disposed of and the petitioners are at liberty to file any document



relating to the schedule properties before the trial Court. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif, Srivilliputhur.

+1cc to Mr.S.Alagusundar, Advocate, SR.No.62529

+1cc to Mr.M.Ashok Kumar, Advocate, SR.No. 63247

C.R.P. (PD) (MD) No.2409 of 2015
25.04.2019

mrn

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