



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2511 of 2015

and

M.P. (MD) No. 1 of 2015

S.Vijayakumar

.. Petitioner

Vs.

1.R.Gnanadhas

2.Thangam

3.N.Swaminathan

.. Respondents

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.181 of 2015 in I.A.No.623 of 2010 in O.S.No.448 of 2007 on the file of the learned 1st Additional District Munsif, Nagercoil dated 17.06.2015.

For Petitioner

: Mr.M.P.Senthil

For 1st Respondent

: Mr.K.P.Narayanakumar

For Respondents 2 and 3

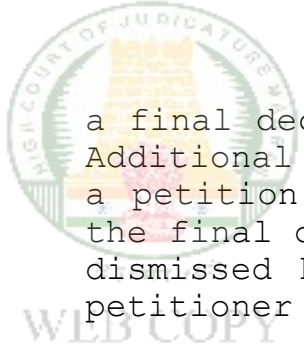
: No Appearance

ORDER

Heard Mr.M.P.Senthil, learned counsel appearing for the petitioner and Mr.K.P.Narayanakumar, learned counsel appearing for the first respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.181 of 2015 in I.A.No.623 of 2010 in O.S.No.448 of 2007 dated 17.06.2015 on the file of the learned 1st Additional District Munsif, Nagercoil.

3.The petitioner herein is the proposed respondent, the first respondent herein is the plaintiff and the respondents 2 and 3 herein are the defendants 1 and 2 in the suit. The first respondent herein has filed a suit in O.S.No.448 of 2007 seeking a relief of partition and recovery of possession of the plaintiff's northern 8 cents in the suit schedule property. The trial Court passed a preliminary decree for partition. The first respondent herein filed



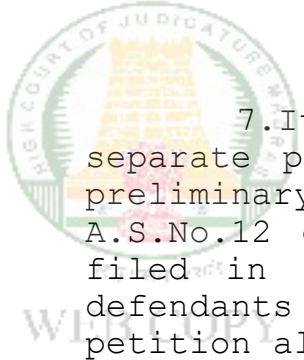
a final decree petition in I.A.No.623 of 2010 before the learned 1st Additional District Munsif, Nagercoil. The revision petitioner filed a petition in I.A.No.181 of 2015 to implead himself as a party in the final decree petition in I.A.No.623 of 2010 and the petition was dismissed by the trial Court. Against the order of dismissal, the petitioner herein has come forward with this revision petition.

4. On the side of the petitioner, it is stated that the mother of the petitioner executed a settlement deed in favour of the petitioner and when the petitioner filed a petition to implead himself as one of the party, the trial Court dismissed the petition and passed the final order. The mother of the petitioner filed an appeal and prayed that an opportunity may be given to the petitioner to proceed with the appeal against the final decree petition to claim equity.

5. The learned counsel appearing for the petitioners would rely upon the Judgment passed by this Court in the case of **V.L.Dhandapani v. Revathy Ramachandran & Others** reported in **2014-3-L.W. 769**, which reads as follows:

"a transferee pendente lite can be impleaded as a party to the suit"

6. On the side of the first respondent, it is stated that the petitioner is a third party. The original defendants are the parents of the revision petitioner and there is no necessity to implead the petitioner as a party, as his parents are already parties to the suit. Whatever the share allotted to the parents, the revision petitioner can get it. It is stated that this is the third round of litigation. Already a suit in O.S.No.55 of 1999 was filed and the same was decreed on 08.12.2000 and the original defendants set up the petitioner to file frivolous petitions. After the preliminary decree was passed on 22.04.2010, the respondent filed three applications viz., for final decree, for appointment of Commissioner and for temporary injunction restraining the defendants from making any construction in the schedule property. During the pendency of the final decree application, the defendants made some construction in the schedule property and they are allowed to remove the same and to deliver possession of plaintiffs' half share in the property. The appeal was filed against the preliminary decree and A.S.No.12 of 2011 is dismissed by confirming the preliminary decree. The Commissioner have filed a report demarcating the portions. At this state, the revision petitioner has filed this petition for impleading himself as a party. After five years after the execution of the alleged settlement deed dated 10.11.2010, this petition is filed by the revision petitioner and the trial Court is right in dismissing the petition. Only during the pendency of the suit proceedings, the settlement deed is executed. The petitioner is non other than the son of the respondents 2 and 3. Since the respondents 2 and 3 are parties to the suit, there is no necessity for the petitioner to be impleaded in the suit.



7. It is seen that the suit is filed for partition and for separate possession. The suit is filed in the year 2007 and the preliminary decree was confirmed by the first Appellate Court in A.S.No.12 of 2011 and in between, the final decree petition was filed in I.A.No.623 of 2000. The respondents 2 and 3 are the defendants in the suit and they are parties in the final decree petition also. During the pendency of the final decree petition, the defendants who are the respondents 2 and 3 herein have executed a settlement deed in favour of the revision petitioner. Though the settlement deed was executed on 10.11.2010, the revision petitioner has not come forward to implead himself in the final decree proceedings. Only after a lapse of five years from the date of settlement, the revision petitioner has come forward with this petition to implead himself. The settlement deed is executed during the pendency of the suit and the final decree proceedings. The executors of the settlement deed is non other than the father and mother of the revision petitioner. The respondents 2 and 3 are parties to the suit and to the final decree proceedings and there is no necessity for the revision petitioner to be a party in the final decree proceedings. The revision petitioner is entitled to the share that will be allotted to his parents. The settlement deed is executed after the filing of the final decree petition. Impleading the revision petitioner will further cause delay in the case.

8. In the above circumstances, there is no sufficient reason enough to interfere in the order passed by the trial Court. This Civil Revision Petition is **dismissed** by confirming the order passed in I.A.No.181 of 2015 in I.A.No.623 of 2010 in O.S.No.448 of 2007 dated 17.06.2015 on the file of the learned 1st Additional District Munsif, Nagercoil. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The 1st Additional District Munsif, Nagercoil.

+1 CC to M/s.M.P.SENTHIL, Advocate SR-64303.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate SR-64797.

C.R.P. (PD) (MD) No.2511 of 2015
30.04.2019

CS: (07/06/2019) 3P 4C