



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

C.R.P. (MD)No.805 of 2014
and M.P. (MD)No.1 of 2014

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1.T.Arumugam
2.Sridharan
3.Chandrasekaran

... Petitioners

Vs.

1.Lalitha
2.Banu
3.Vimala
4.Ambika
5.Rohini
6.Manogaran
7.G.Purushothaman
8.Padmavathi
9.Uma
10.Jegannathan
11.M/s.Jegadambal Rice Mill,
A partnership firm by its partner,
Company Street, Mannachanallur,
Trichy District.
12.M/s.Shenbaga Rice Mill,
A partnership firm by its partner,
Company Street, Mannachanallur,
Trichy District.
13.R.Rajaraman
14.R.Anuradha
15.K.Megala

... Respondents

Prayer: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.11.2013 passed in I.A.No.489 of 2013 in O.S.No.65 of 2012 on the file of III Additional District Judge, Tiruchirappalli, and allow the present Civil Revision Petition.

For Petitioners : Mr.M.Saravanan

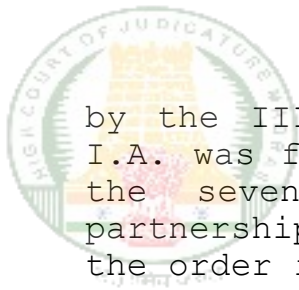
For R1 to R6 : Mr.K.Govindarajan

For R7 to R15 : No Appearance

ORDER

This Civil Revision Petition is directed against the order dated 04.11.2013 in I.A.No.489 of 2013 in O.S.No.65 of 2012 passed

<https://hcservices.ecourts.gov.in/hcservices/>



by the III Additional District Judge, Tiruchirappalli. The said I.A. was filed by the respondent herein to bring the properties of the seventh and eighth defendants in the suit, which are partnership firms, within the scope of the suit for partition. By the order impugned herein, the said application was allowed.

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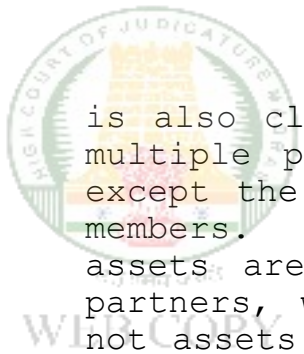
2.I heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents.

3.The learned counsel for the revision petitioners pointed out that the suit is for partition and also for a direction to the defendants to render true and proper accounts in regard to the income by way of profits received by him from the seventh and eighth defendant partnership firms. He, thereafter, relied on the affidavit filed in support of the application to include the properties as suit schedule properties and pointed out that it is admitted therein that the properties are the properties of the seventh and eighth defendant partnership firms. He also pointed out that it is the admitted position that the said seventh and eighth defendants partnership firms have multiple partners. In support of this submission, he relied upon the affidavit wherein the respondents / plaintiffs state that the deceased, namely, Thiruvengadam Chettiyar, had 1/13 share in the 7th defendant and 1/12 share in the 8th defendant. He also pointed out that in the written statement, the revision petitioners have categorically stated that only the first defendant is a partner in the said partnership firm and the other partners therein are not family members. On that basis, the learned counsel submitted that the order of the trial court in allowing the application to include the said properties is erroneous and a result of non-application of mind.

4.In response and to the contrary, the learned counsel for the respondent submitted that the suit is not only for partition but also to render true and proper account with regard to the profits of the seventh and eighth defendant partnership firms and for payment of the share from such profits to the plaintiffs. He further submitted that the revision petitioners are not prejudiced by the impugned order because the trial Court has not concluded that the said properties should be the subject matter of the partition but has merely included the said properties in the schedule so as to enable a decision on whether the said properties should be included in the assets to be partitioned at the time of final disposal.

5.The records were perused and the oral submissions of both learned counsel were carefully considered.

6.It is the admitted position that these assets are assets of the relevant partnership firms. In fact, in paragraph 3 of the affidavit filed in support of I.A.No.489 of 2013, the respondents herein / petitioners therein categorically stated that the properties belong to the 7th and 8th defendant partnership firms. It



is also clear from the plaint that the said partnership firm have multiple partners. The written statement further discloses that except the revision petitioners, the other partners are not family members. In light of the fact that it is admitted that these assets are assets of the partnership firms, which have multiple partners, who are not family members, the said assets are clearly not assets that are liable to be included as subject matter of the partition suit. However, it is true that the plaintiffs would have the right to seek a share in the profits of the said partnership firms as per the second relief claimed in the suit.

7.Nevertheless, on that basis, the said properties cannot be included as a suit schedule property. Accordingly, the order of the Trial Court is vitiated by material irregularities in the exercise of jurisdiction. Accordingly, the said order is liable to be interfered with in the exercise of revisional jurisdiction.

8.For the reasons stated above, the order of the trial Court in I.A.No.489 of 2013 in O.S.No.65 of 2012 dated 04.11.2013 is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The III Additional District Judge,
Tiruchirappalli.

+1 CC to Mr.K.GOVINDARAJAN, Advocate SR-84384.

+1 CC to M/s.N.C.ASHOK KUMAR, Advocate SR-84406.

C.R.P. (MD) No.805 of 2014
29.08.2019

CS(10.10.2019) 3P 4C