



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 26.09.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (NPD) (MD) .No.2226 of 2018

and

C.M.P. (MD) .No.9997 of 2018

M.Mayandi

... Petitioner/Appellant/Petitioner/
2nd Defendant

-Vs-

1.C.Alagammal
2.K.Parvathi
3.M.Rajathi
4.M.Ganesan
5.M.Marimuthu

... Respondents/Respondents/
Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the order made in C.M.A.No.39 of 2017, dated 10.07.2018 on the file of the Second Additional Sub Court, Madurai, confirming the order and decreetal order dated 07.10.2016 made in I.A.No.44 of 2015 in O.S.No.240 of 2014 on the file of the District Munsif Court, Madurai Taluk and allow the CRP.

For Petitioner : Mr.R.Murali
For Respondents : Mr.R.Manoharan

O R D E R

The civil revision petition has been filed against the order passed by the Second Additional Sub Court, Madurai in C.M.A.No.39 of 2017, dated 10.07.2018, confirming the order passed by the District Munsif Court, Madurai Taluk in I.A.No.44 of 2015 in O.S.No.240 of 2014, dated 07.10.2016.

2. The respondents 1 to 3 are the sisters of the revision petitioner and respondents 4 and 5 are the pre-deceased brother's son of the revision petitioner. The respondents are the plaintiffs and they have filed a suit in O.S.No.240 of 2014 before the District Munsif Court, Madurai Taluk, for partition of the suit schedule property i.e., Survey No.31/1A3 to an extent of 1 Acre situated at Melappanangadi Village, Madurai. During the pendency of the suit, the revision petitioner/defendant filed an application in I.A.No.44 of 2015 before the District Munsif Court, Madurai Taluk, seeking to reject the plaint stating that the suit property was assigned by the



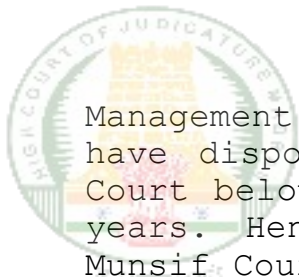
Government in favour of the petitioner in terms of Tamil Nadu Land Reforms Fixation of Sealing on Land Act, 1961. According to the revision petitioner, all the assignment charges have been paid out of his own income and he contended that the suit is not maintainable, since it is not a joint family property. According to the respondents, the suit property was assigned in the name of the revision petitioner and the assignment charges have been paid out of the contribution made by the respondents as well as the revision petitioner. Therefore, the suit schedule property is a joint family property. Hence, they filed a suit for partition. The Court below dismissed the said application stating that all these issues can be decided only after let in evidence. Against the said order, the revision petitioner has filed C.M.A.No.39 of 2017 before the II Additional Sub Court, Madurai and the same was also dismissed for the same reasons. Challenging the order passed in C.M.A.No.39 of 2017, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner has purchased the property out of his own income and that too the property was assigned by the Government. Therefore, the question of joint family property does not arise. He would further submit that he has not received any amount from the respondents 1 to 5 to pay the assignment charges. Therefore, the learned counsel for the revision petitioner would contend that without considering this aspects, the Court below has dismissed the I.A.No.44 of 2015 and the First Appellate Court has also dismissed the C.M.A.No.39 of 2017 without application of mind.

4. The learned counsel for the respondents would submit that the respondents have also contributed for the purpose of assigning the land in favour of the petitioner. Further, the revision petitioner and the respondents are brothers and sisters and the respondents herein are contributed and permitted the revision petitioner to get the assignment. Therefore, according to the respondents, the Court below has rightly dismissed the application.

5. Though the learned counsel for the revision petitioner vehemently opposed the order passed by the Court below, he fairly admitted that the issue can be decided only after let in evidence. Since the matter is pending from the year 2015, he requests this Court to issue appropriate direction to dispose of the suit at the earliest point of time.

6. Considering the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents, this Court is of the view that the issues whether the assignment charges have been paid out of the own income of the revision petitioner or out of the contribution made by the respondents can be decided only after examination of the witnesses and the same can be decided at the time of disposal of the main suit and in view of the



Management in Subordinate Courts/Rules 2007, the Court below should have disposed of the suit within a period of two years, but the Court below has not disposed of the same even after expiry of four years. Hence, this Court is constrained to direct the District Munsif Court, Madurai Taluk to dispose of the suit in O.S.No.240 of 2014, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order, without fail.

7. With the the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Second Additional Sub Judge,
Madurai.

2.The District Munsif,
Madurai Taluk.

+1CC TO MR.R.MURALI, Advocate Sr. No.89915

+1CC TO MR.R.MANOCHARAN, Advocate Sr. No. 90121

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MR (CO)

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