

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.02.2020
CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. No.972 of 2018 and
C.M.P. No.7911 of 2018

1.Revathi
2.Subbayan

... Appellants/ Defendants

vs.

Malarvizhi

...Respondent/Plaintiff

Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of Civil Procedure Code, against the judgment and decree in A.S. No.22 of 2017 on the file of Sub Judge, Sathyamangalam dated 08.12.2017 in reversing the judgment and decree in O.S. No.55 of 2016 on the file of District Munsif Court, Sathyamangalam dated 13.03.2017, thereby remanding the case to the trial court.

For Appellant : Mr.D.J.Venkatesan

For Respondents : Mr.Roshan Atiq

J U D G M E N T

Challenging the judgment and decree of Sub Court, Sathyamangalam dated 8.12.2017 made in A.S. No.22 of 2017, reversing the judgment and decree of the District Munsif Court, Sathyamangalam dated 13.03.2017 made in O.S. No.55 of 2016, the present civil miscellaneous appeal has been filed.

2. Admittedly, the partition suit being O.S. No.244/2015 is pending, unless and until a suit for partition is decided, no relief can be granted to the subsequent purchaser, as the matter is sub judice and it is lis pendens. If any relief is granted in the subsequent suit, namely O.S. No.55 of 2016, holding that the person is entitled to a share in the property, it would amount to adjudicating the partition suit itself, which is not permissible. Hence this court is of the view that, both the suits, will have to be tried together and the judgment and decree passed by the lower appellate court is in order and the matter is remitted to the lower court to try O.S. Nos.244 of 2015 and 55 of 2016 together. As the matter is pending for more than five years, this court expects the lower court, not to adjourn the matter beyond 15 working days at any point of time and bring the issue to a logical end, as expeditiously as possible.

3. The contention of the appellant that no application has been filed by the respondent herein for a joint trial, would amount to putting the cart before the horse. If the respondent herein has not filed the petition, nothing prevented the appellant herein to file a petition seeking for joint trial. Hence the judgment and decree of the lower appellate court is confirmed directing the trial court to decide the matter, as expeditiously as possible, in the light of the observation made supra.

4. With the above observation, the civil miscellaneous appeal is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Asr

To

1. The Sub Court, Sathyamangalam
2. The District Munsif Court, Sathyamangalam

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.SA.Mohammed mubarak , Advocate SR.No. 10776

+lcc to Mr.D.Gopal , Advocate SR.No. 10175

C.M.A. No.972 of 2018

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A.SK(21/09/2020)

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