

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2020

PRONOUNCED ON : 01.06.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

C.R.P. (PD) Nos.3905 and 3906 of 2014

Poosavalli

... Petitioner
(In both petitions)

-VS-

1.Thangavel Gounder

2.Vadivambal

3.Arivazhagan

... Respondents
(In both petitions)

COMMON PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decretal order dated 20.06.2014 passed in I.A.No.157 of 2012 and 60 of 2013 respectively in O.S.No.94 of 2010 on the file of the Sub Court, Nagapattinam.

For Petitioner : Mr.M.Thamizhavel
(In both petitions)

For Respondents : No appearance
(In both petitions)

COMMON ORDER

These Civil Revision Petitions have been filed against the order passed by the Sub Court, Nagapattinam, in I.A.Nos.157 of 2012 and 60 of 2013 in O.S.No.94 of 2010 dated 20.06.2014. The learned Trial Judge has rejected both the interlocutory applications on the ground that they wanted to introduce a new case after long delay and PW1 cross is over and the trial is on the side of the DW1 cross.

2.The facts in brief which are necessary for disposing of the civil revision petitions are as follows:-

(i) The petitioner/plaintiff filed a suit in O.S.No.94 of 2010 before the Sub Court, Nagapattinam, for the relief of partition and for separate possession of the property. The first defendant filed a written statement. During the time of trial, PW.1 was examined and documents were also marked. Thereafter, the first defendant, who is the brother of the petitioner/plaintiff examined himself as DW.1 and the matter was posted for cross examination of DW.1. At this juncture, the plaintiff filed I.A.Nos.157

of 2012 and 60 of 2013.

(ii) I.A.No.157 of 2012 was filed under Order 7 Rule 14(3) r/w Section 151 of C.P.C to condone the delay in filing the documents namely, the plaint, written statement, judgment and decree and Advocate Commissioner's Report in O.S.No.11 of 1977 on the file of the learned Subordinate Judge, Nagapattinam, on the ground that the first defendant's father has filed the above suit in the year 1977, for partition among the coparceners and obtained the partition deed. At that time, the petitioner/plaintiff was a minor and the said fact was not known to that. After the cross examination of PW.1, she came to know about the same and collected the particulars and filed the aforesaid interlocutory application.

(iii) Counter was filed objecting to receive the documents on the ground that there is a pleading to that effect and in the partition suit in O.S.No.11 of 1977 preliminary decree was passed and thereafter, final decree passed on 03.11.1977. After passage of 34 years from the final decree proceedings, the petitioner tried to mark the documents on the ground that she was not added as party and as she was minor.

(iv) In I.A.No.60 of 2013, the petitioner wanted to file an application under Order 1 Rule 10(2) r/w Section 151 CPC to bring on record one Panner Selvam, Murugaraj and Vinodkumar, who are the legal heirs of the deceased Vadivel and deceased Chellappa and the parties in O.S.No.11 of 1977.

(v) Both the applications were also heard together, however separate orders have been passed whereby the learned Subordinate Judge, Nagapattinam, rejected both the interlocutory applications. Hence, the above civil revision petitions.

3.Heard the learned counsel appearing for the petitioner and perused the records.

4.After hearing learned counsel, I find that the suit for partition filed by the sister against the brother and others. The brother has taken a

stand that in the year 1977, the partition suit was filed in O.S.No.11 of 1977 in respect of the joint family property held by the brother of his father and in that partition suit preliminary decree was passed and subsequently final decree was also passed on 03.11.1977. However in the present partition suit, the property that is covered under the earlier suit in O.S.No.11 of 1977 is not the subject matter. Further more, the petitioner/plaintiff is also residing in the very same place.

5. Yet another point is that the petitioner/plaintiff claimed minority through the institution of O.S.No.11 of 1977. As per the plaint, she is 50 years and final decree was passed in the year 1977 namely 37 years ago. Therefore, this Court is unable to accept the said contention on behalf of the petitioner/plaintiff when the property in the present suit is not a subject matter of the earlier suit. The trial Court had rightly rejected the application to receive the additional documents on the ground that in the absence of any pleadings in the present suit and in the absence of any nexus to the present schedule with that of the schedule in O.S.No.11 of 1977, the documents are not relevant to the present suit. The order passed by the trial Court cannot

be found fault with. Accordingly, C.R.P(MD) No.3905 of 2014 is liable to be dismissed.

6.C.R.P(PD) No.3906 of 2014 has been filed against the order in I.A.N0.60 of 2011, wherein the petitioner/plaintiff wanted to bring on record the Panneer Selvam, Murugaraj and Vinodkumar as legal representatives of the deceased Vadivel and deceased Chellappa. Admittedly, the proposed parties' fathers namely Vadivel and Chellappa were parties to the earlier suit in O.S.No.11 of 1977. As observed, the earlier suit property and the suit property herein are totally different. The contention raised by the first defendant was not explained by the plaintiff as to whether the properties in those two suits are different and hence, in the absence of any pleadings in the plaint regarding the suit property having connection with the schedule of property in the earlier suit in O.S.No.11 of 1977, the legal heirs of the defendants therein are not necessary parties for adjudication of the present suit. Besides both these applications have been filed, when the matter was posted for cross-examination of DW.1, also assumes significance and hence,

this Court find no merits in both the civil revision petitions.

7.In view of the above observations, these Civil Revision petitions are dismissed and the orders passed by the learned Subordinate Judge, Nagapattinam, in respect of the interlocutory applications in I.A.Nos.157 of 2012 and 60 of 2013 are confirmed, on different reasoning. No costs.

01.06.2020

Index: Yes / No
Internet: Yes / No
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To:-

- 1.The Sub Court,
Nagapattinam.
- 2.The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

RMT. TEEKAA RAMAN, J.

cp



**Pre-Delivery Order made in
C.R.P. (PD) Nos.3905 and 3906 of 2014**

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