

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**C.R.P(PD)No. 3922 of 2018**

**and**

**C.M.P.No. 21762 of 2018**

Mohan

...Petitioner

Vs.

1.A.K.Ramalingam

2.Rajasekaran

3.Sivasankaran

4.Natarajan

5.K.Baskaran

6.Ravichandran

7.Gomathi

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order in C.M.A.No. 46 of 2016 on the file of the Additional District Judge, Chidambaram dated 22.06.2018, confirming the order dated 19.01.2016 passed in I.A.No. 303 of 2014 in O.S.No. 28 of 2011 on the file of the Court of Sub-Ordinate Judge, Chidambaram, Cuddalore District.

For Petitioner : Mr.R.Venkatajalapathy for Mr.S.Kadarkarai

For Respondents : Mr.A.Muthukumar

**ORDER**

This revision is at the instance of the 7<sup>th</sup> defendant in O.S.No. 28 of 2011, who suffered an order for appointment of a receiver with reference to Items 26 to 49 of the suit properties.

2. The suit in O.S.No. 28 of 2011 was originally filed as O.S.No. 136 of 2004 on the file of the Principal District Court, Cuddalore was transferred to Additional District Court, Chidambaram and numbered as O.S.No. 7 of 2005. Thereafter, after the amendment of the Tamilnadu Civil Courts Act, the suit came to be transferred to Sub-Court, Chidambaram and numbered as O.S.No. 28 of 2011. All the defendants except 7<sup>th</sup> defendant in the suit remained exparte. Since the 7<sup>th</sup> defendant did not allow the suit to proceed on merits, even though there was no dispute with reference to the share of the plaintiff. The plaintiff, was forced to file an application for appointment of receiver in respect of Items 26 to 49, since Items 1 to 25, were alienated and the defendants are in possession of the Items 51 to 54 for the residential purposes.

3. The said application was resisted by the 7<sup>th</sup> defendant,

petitioner herein, contending that he was not enjoying the income from the agricultural lands namely Items 26 to 48. He also further contended that he was in possession of the Item 49 alone. He got a meagre income of Rs.2,000/- per month from the building consists of 24 rooms and 2 shops in a commercial area of Chidambaram town.

4. The Courts below, upon a consideration of the facts and circumstances of the case as well as the pleadings concluded that, it will be in the fittest of the things to appoint a receiver. Aggrieved, the 7<sup>th</sup> defendant preferred an appeal in C.M.A.No.46 of 2016 on the file of the Additional District Court, Chidambaram. The learned Additional District Judge, Chidambaram, who heard the appeal, on re-appreciation of the material on record concluded that it will be in interest of the parties to have a receiver appointed and dismissed the appeal. Aggrieved, the petitioner / 7<sup>th</sup> defendant in the suit has come up with this revision.

5. I have heard Mr.R.Venkatajalapathy for Mr.S,Kadarkarai, learned counsel for the petitioner, Mr.A.Muthukumar, learned counsel for

the respondents.

6. Mr.R.Venkatajalapathy would vehemently contend that in the absence of allegations of waste a receiver should not be appointed in a suit for partition disturbing the possession of the properties by the co-sharers. No doubt, the law on appointment of receiver is clearly settled by this Court to the effect that a co-sharer should not be dispossessed pending suit for partition by appointing a receiver. This said law is not applicable to all situations, there are always exceptions. I find that this case comes under one of those exceptions. The defendant would contend that the plaintiff is in possession of the Items 26 to 48, being agricultural land. The plaintiff would contend that those properties are also in possession of the 7<sup>th</sup> defendant and the income is being taken by him. If the 7<sup>th</sup> defendant is not in possession of those lands, he cannot have an objection for appointment of receiver. Therefore, the order appointing a receiver in respect of Items 26 to 48 cannot be assailed by the petitioner herein, who claims the first respondent is in possession of those properties. With reference to item 49 alone, there seems to be a dispute between the parties. While the petitioner /

first respondent herein would claim that the petitioner is realising a sum of Rs.44,000/- as rent per month. The petitioner would claim that he is getting only a meagre income of Rs.2,000/- per month.

7. Mr.A.Muthukumar, learned counsel for the respondents would point out that the property consists of 24 rooms and 2 shops is in main commercial area of Chidambaram town, which is also tourist centre because of the lord Nataraja temple situated there at. It is very difficult to believe the claim of the petitioner that he is getting an income of Rs.2,000/- per month. This very allegation shows that the petitioner is suppressing the income and he is attempting to defraud the other co-owners of the income from the property. In partition suit, the Court has to also preserved the interest of the parties.

1. Both the Courts below adverted the law relating to appointment of receiver and concluded that appointment of receiver is essential in the case on hand. I do not find any material irregularity of the findings of the Courts

2.

**R.SUBRAMANIAN, J.**

KKN

below, I do not think they need not be interfered with. This civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

24.08.2020

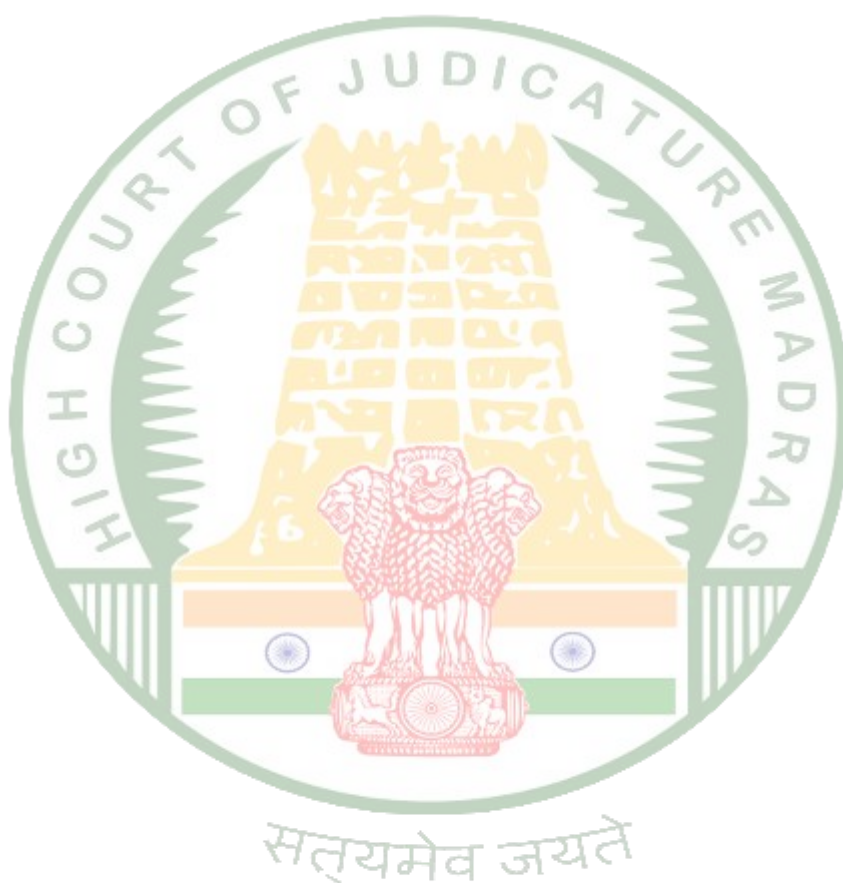
kkn

To:-

1. The Additional District Judge,  
Chidambaram.
2. The Sub-Ordinate Judge,  
Chidambaram, Cuddalore District.

WEB COPY

**C.R.P(PD)No. 3922 of 2018**  
**and**  
**C.M.P.No. 21762 of 2018**



WEB COPY