

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2021

Delivered on : 26.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No. 487 of 2019

K.M.Kenchappa

... Petitioner

Vs.

1.Venkaesappa

2.Manohara

3.Sankaramma

4.Munirathinamma

5.Ramachandra

6.Nagappa

7.Chennaveeramma

8.Medurappa @ Annaiappa

9.Sankaramma

10.Aruna

11.Kanaga

12.Sagar

13.Kanthamma

14.Ramesh

15.Kenchamma

16.Kenjamma @ Muniamma

17.Pillamma

18.Maramma

19.Chikka Marappa

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 28.08.2018 in I.A. No.41 of 2018 in O.S. No.89 of 2012 on the file of the Additional District Court, Hosur.

For Petitioner : Mr. K.Chandrasekaran

For Respondents 2 - 13 : Mr. S.C.Vishwanath

1, 14 – 19: No appearance

ORDER

This petition is filed for setting aside the order passed in I.A. No.41 of 2018 in O.S. No.89 of 2012 on the file of the Additional District Court, Hosur.

2. I.A. No.41 of 2018 was filed under Order 1 Rule 10 (1) & (2) CPC, for impleading the proposed parties as plaintiffs 2 to 7 in O.S. No.89 of 2012. The case of the petitioner is that the suit properties belonged to one Kenche Gowdu and Kempe Gowdu, by purchase on 27.12.1919. Each of them are entitled to half share in the suit property and they were enjoying the suit property by possessing jointly. Kenche Gowdu died in the year 1930, leaving behind his wife Chinnamma and sons Pedda Marappa and Chinna Marapa. After his death, his wife and sons were enjoying half share of the suit property. Kenche Gowdu sold his half share to one Thimmarayappa, Chinnamarappa, Kenchappa and Munikempaiah on 10.11.1959. Among these co-purchasers, Chinnamarappa is entitled to 1/4 share over the half share of the suit properties. Therefore,

Chinnamma. Pedda Marappa and Chinna Marapa are entitled to 5/8 share over the suit properties by succession and purchase. Chinnamma died on 03.10.1970, Pedda Marappa died on 10.10.1983 and Chinnamarappa died in the year 1964 leaving their legal heirs mentioned in the petition to succeed to their properties. Pedda Marappa's legal heirs and Chinnamarappa's legal heirs are entitled to 5/8 shares over the suit properties. But the suit was filed by the petitioner alone. Chinnamarapa's wife Puttammal executed a lease deed on 25.09.1967 in his favour. Therefore, all these persons have to be impleaded as proper and necessary parties.

3. This petition was opposed by the respondents claiming that the petitioner had already filed a suit in O.S. No.116 of 1985 before the District Munsif, Hosur, against the respondents. It was transferred to the District Court, Denkanikottai and numbered as O.S. No.229 of 1993. After contest, the suit was dismissed on 31.08.2006. The petitioner filed an Interlocutory Application in unnumbered appeal before the Sub Court, Hosur, in I.A. No.129 of 2010 in I.A. No.62 of 2010 in I.A.No.13 of 2010 and after contest, these petitions were dismissed. There is no appeal or revision proceedings initiated against the dismissal of these petitions. Earlier suit was filed claiming title and possession. Now the petitioner filed a suit for partition. Suppressing the fact that the earlier suit was disposed on merits between the same parties and for the same

properties, this suit is filed and it is barred by the principle of res judicata under Order 2 Rule 2 CPC. The petition was filed very belatedly only to protract the proceedings. The trial Judge, after considering the rival submissions, dismissed the petition on the ground that it was filed after a huge delay of six years after the institution of the suit only with a view to protract the proceedings.

4. Learned counsel for the petitioner submitted that the proposed respondents are proper and necessary parties for the effective and binding adjudication of the dispute between the parties and therefore, the petition for impleading the proposed parties was filed. However, learned Additional District Judge, Hosur, has not considered the same and dismissed the petition on the ground of delay. Delay is not the ground for dismissal of the petition. When the substantive rights of the parties are involved, the petition cannot be dismissed on the ground of delay. Therefore, he seeks to set aside the order of passed by the Additional District Judge, Hosur, in I.A. No.41 of 2018 in O.S. No.89 of 2012.

5. Learned counsel for the respondents opposed this petition on the ground that this petition is only filed to protract the proceedings. The petitioner should have impleaded the proposed respondent at the time of filing the suit if he really thought that they are proper and necessary parties. The suit itself is barred by law on the principle of res judicata under Order 2 Rule 2 CPC.

6. Considered the rival submissions. The suit is filed for relief of partition by the sole plaintiff against fourteen defendants. In the plaint, it is claimed that the suit properties were purchased by Kenche Gowdu and Kempe Gowdu on 27.12.1919 and they are entitled to half share each. Kenche Gowdu died in the year 1930, leaving his wife and two sons and they are entitled to half share of Kenche Gowdu. The petitioner claims that Chinnammal w/o. Kenche Gowdu along with others executed two gift deeds in favour of petitioner on 04.03.1967 and 20.03.1967 and therefore he is entitled to the right and possession of the suit properties along with other joint purchaser Kempe Gowdu.

7. The petitioner claims that Kenchei Gowdu died in the year 1930, leaving behind his wife and two sons, and from his wife and others, he got two gift deeds and became entitled to half share along with other joint purchaser Kempe Gowdu. The second claim in the plaint is that Kenche Gowdu sold his half share properties to one Thimmarayappa, Chinnamarappa, Kenchappa and Munikempaiah. It is not known how Kenche Gowda who died in the year 1930, could have sold his share to the aforesaid persons on 10.11.1959. It is a patent mistake and apparent on the face of the record. Instead of Kempe Gowdu, the name might have been wrongly typed as Kenche Gowdu. Be that as it may, it is seen from the submissions made by the respondents that already a suit was filed

in O.S. No.116 of 1985 by the petitioner against the same respondents before the District Munsif Court, Hosur, for the relief of declaration and possession and the same was transferred to District Munsif Court, Denkanikottai, and numbered as O.S. No.229 of 1993 and came to be dismissed after contest on 31.08.2006. It is seen that this judgment has become final. The petitioner has not disputed the filing of aforesaid suit and dismissal of it. Not only that, it is also claimed that one Munichoodappa, has filed a suit in O.S. No.350 of 1968 on the file of District Munsif Court, Hosur, against the petitioner in respect of Survey No.104/1 of the suit property with respect to 0.47 cents and that suit came to be decreed in favour of Munichoodappa. Survey No.104/1 is one of the suit properties in the suit. It is clear that there were previous litigations between the petitioner and the respondents and the petitioner and the third parties. However, the petitioner has not chosen to refer about these previous litigations in the plaint at the time of filing plaint. He knew pretty well that there are other interested persons, according to him, are proper and necessary parties to the suit. However, he has not chosen to implead them as plaintiffs and defendants. Six years after filing of suit, he filed the present petition for impleading the proposed parties as plaintiffs.

8. This petition cannot be entertained for the reason that there is a huge delay in filing the petition and that there are previous litigations between the petitioner and respondents and petitioner and one Munichoodappa and those proceedings are wilfully suppressed in the plaint. Most importantly, he claimed that Kenche Gowda's wife and others executed two gift deeds in his favour. He claimed that Kencha Gowda died in the year 1930. It is said in the plaint that Kenche Gowdu sold his half share on 10.11.1959. It is patently incorrect. The petitioner has suppressed the material facts and filed this petition with a huge delay. Most importantly, no legal heir certificate was filed. For all these reasons, this Court is of the considered view that the prayer to implead the proposed respondents as plaintiffs in the suit cannot be entertained. The learned Additional District Judge, Hosur, had rightly dismissed the petition.

7. This Court finds no reason to interfere with the order of the Additional District Judge, Hosur, in I.A. No.41 of 2018 in O.S. No.89 of 2012. Accordingly, this civil revision petition is dismissed. No costs.

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Index: Yes / No

Speaking order / Non-speaking order

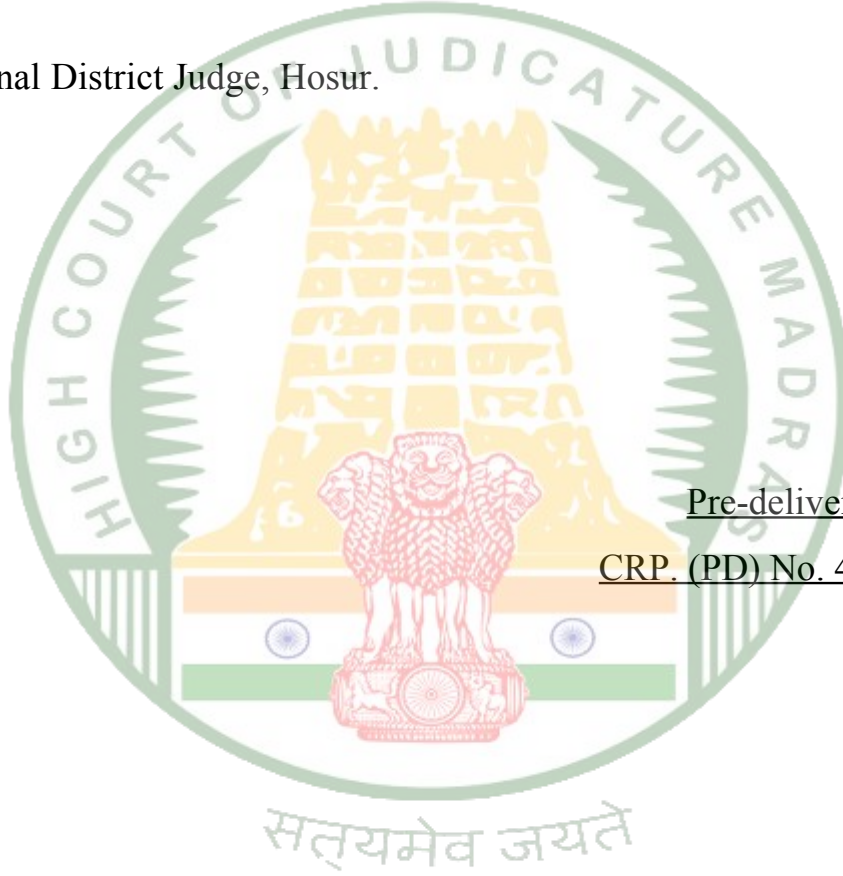
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G.CHANDRASEKHARAN. J.,

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Copy To:

The Additional District Judge, Hosur.



Pre-delivery Order in
CRP. (PD) No. 487 of 2019

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