

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.(PD) No.257 of 2021
and
C.M.P.No.2458 of 2021

Mallika

..

Petitioner/Plaintiff

Vs

1.P.Rajalakshmi
2.D.Gajalakshmi
3.G.Koteeswaran
4.B.Sundari

..

Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside Docket order in Memo passed by the III Additional City Civil Court, Chennai dated 02.02.2021 in O.S.No.3800 of 2018 and consequently for a joint trial of O.S.No.3800 of 2018 and O.S.No.12167 of 2010.

For Petitioner

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Mr.N.Vanaraj

For R3

..

Mr.V.M.Venkatramana

For R2 and R4

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Mr.S.Viswanathan

For R1

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No appearance

ORDER

There are two suits pending. First suit in O.S.No.12167 of 2010 was originally filed before the Original Side of this Court and later transferred to the III Additional City Civil Court, Chennai. The suit had been filed by three plaintiffs namely, S.Kotteeswaran, K.Hemapriya and K.Goutham. The 2nd and 3rd plaintiffs were subsequently impleaded. The defendants were seven in number namely, 1st defendant / J.Mallika, 2nd defendant / J.Ganesh, 3rd defendant / R.Padmanaban, 4th defendant / R.P.Ramesh, 5th defendant / P.Rajalakshmi, 6th defendant / D.Gajalakshmi and 7th defendant / B.Sundari. The 5th, 6th and 7th defendants were subsequently impleaded. That suit had been filed seeking partition and separate possession of 1/3rd share in the property which was mentioned in the schedule to the plaint. The defendants have filed their written statement.

2. Thereafter, the 1st and 2nd defendants have filed O.S.No.3800 of 2018 for partition and separate possession including three schedules of property. The first schedule is already mentioned in O.S.No.12167 of 2010. There were two other properties mentioned in the schedule to the plaint, in which the plaintiffs claimed partition and separate possession.

The defendants in the said suit were the 5th , 6th and 7th defendants and also the 1st plaintiff.

3.A memo had been filed in O.S.No.3800 of 2018 requesting joint trial of both the suits. The learned Judge had held over the memo for a considerable period of time and thereafter on 02.02.2021 had rejected the request for joint trial but had rather stated that simultaneous trial of the two cases can be done.

4.Questioning that particular order the present Revision Petition has been filed.

5.In the first place, in the written statement filed by the present petitioner in O.S.No.12167 of 2010, it had been claimed that the suit should be dismissed because two schedule mentioned properties had been omitted. It is also claimed that the property is not liable for partition since it is governed by a Will dated 22.04.1991 said to have been executed by M.K.Sambasiva Mudaliar.

6.Insofar as the 2nd suit namely, O.S.No.3800 of 2018 is concerned as stated there are two further properties.

7. When examining the nature of evidence that has to be let in, the plaintiff O.S.No.12167 of 2010 will have to rest content with a claim for 1/3rd share in the property mentioned in the schedule. The present petitioners claim that they will be automatically entitled to a share in the said property, in view of the written statement filed by them. Unfortunately, no relief has been sought for separate possession of the share allotted to the defendants and Court fees under Section 37(3) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 had not been paid along with the written statement.

8. On the other hand in O.S.No.3800 of 2018, they have not sought for any partition or separate possession of the property of the other two properties.

9. Naturally, separate evidence will have to be recorded in both the suits. Evidence can be recorded simultaneously.

10. The plaintiff in O.S.No.12167 of 2010 has to lead evidence as to why he is entitled for partition of 1/3rd share in the property mentioned in the schedule and will also have to lead rebuttal evidence with respect to

O.S.No.3800 of 2018. That evidence in O.S.No.3800 of 2018 is to be recorded separately, since there are three schedule properties.

11. Similarly, the revision petitioners who are the 1st and 2nd defendants in O.S.No.12167 of 2010 will have to first cross-examine the plaintiff with respect to the claim for partition with the schedule mentioned property in the said plaint and thereafter, give separate evidence in chief with respect to the averments made in O.S.No.3800 of 2018. Thus, two separate sets of evidence are required. They may be recorded simultaneously. Insofar as documents are concerned, if documents are filed in one suit, a copy of the same may be filed in the other suit.

12. Let the learned Judge, while analysing the evidence take into consideration the entirety of the evidence recorded separately in O.S.No.12167 of 2010 and in O.S.No.3800 of 2018 and then come to a conclusion whether the plaintiff in O.S.No.12167 of 2010 is entitled for partition and the plaintiff in O.S.No.3800 of 2018 is entitled for partition and separate possession not only of the two properties but also to the schedule mentioned property in O.S.No.12167 of 2010.

13.A grievance has been expressed that some of the defendants cannot be cross-examined by the other defendants in the suit. That contention may not be correct.

14.Order I Rule 3 of CPC which deals with respect to who may be impleaded as defendants provides that the plaintiff should aver a string of events which lead rise to the existence of a cause of action for institution of the suit.

15.The plaintiffs in O.S.No.12167 of 2010 have their own reasons for instituting the suit. Similarly, the plaintiffs in O.S.No.3800 of 2018 have their own reasons for instituting the suit. Even under Order I Rule 5 of CPC, it has been provided that defendants can be impleaded even though they are directly interested in the subject matter of the suit.

16.Therefore, the defendants who find that some of the other defendants during the course of their examination have spoken against their particular interest, can come forward to cross-examine the said witnesses.

17.Either party to a suit has very right to summon witnesses. If any of the defendants do not voluntarily come forward to graze the witness box, the plaintiff can issue summons to call upon the said defendant to speak or subject themselves to cross-examine.

18. It is always open to the learned counsels to take full advantage of the procedures as envisaged and permit their respective clients to lead evidence and get instructions when cross-examining the witnesses who speak adverse to the interest of their clients.

19. A trial is a composite event which consists of a bundle of evidence, which finally have to be collated and analyzed and judgment has to be passed by the Judge.

20. The parties are directed to move for simultaneous trial. I would leave it to the wisdom of the learned Judge to conduct the trial. What is required is that an opportunity must be given each one of the parties to graze the witness box and say what they want to say and also be subjected to cross-examination. That opportunity shall always be certainly granted by the learned Judge. Let the trial in both the suits be conducted simultaneously. I am confident that the learned Judge knows the implication of order passed by him regarding simultaneous trial.

21. With the above observations, the parties are relegated back to the trial court and they should take up the opportunity to lead evidence and complete the trial as early as possible. The matter is pending from the year 2006 and I hope that the learned Judge would bestow some personal attention and try to record the evidence as early as possible, of course

subject to the co-operation extended by the parties and complete the trial within a reasonable time.

27.04.2021

Internet: Yes/No

Index: Yes/No

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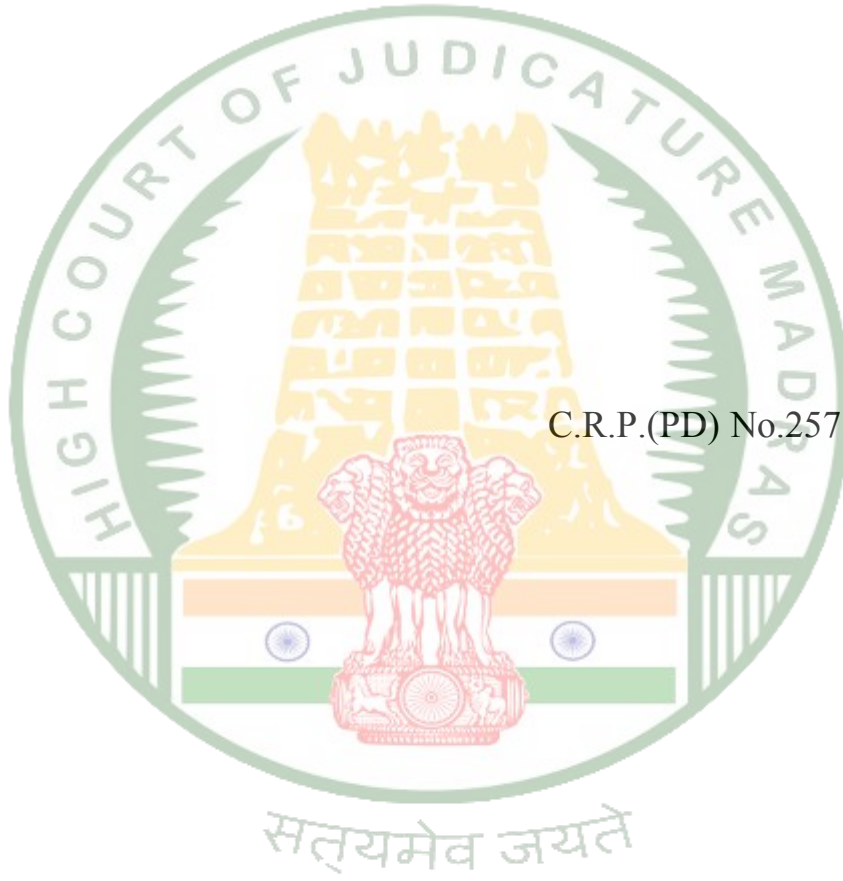
The III Additional City Civil Court,
Chennai.



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C.V.KARTHIKEYAN,J.

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