



CRP.PD. No.853 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **09.12.2021**

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

CRP (PD) No.853 of 2019

and

CMP. No.5545 of 2019

K.Marudhamuthu @ Chinnappan

... Petitioner

- Vs -

1.A.Krishnaveni

2. M.Kalaivani

3.Padmavathi

4.A.Arunprasath

5.A.Kannan

... Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.12.2018 in I.A.No.776 of 2018 in O.S.No.237 of 2013 on the file of the learned Subordinate Judge, Pollachi.

For Petitioner

: Mr.S.Bala Ganesh

For Respondents

: Mr.P.Valliappan for R1 & R2
No Appearance for R3 to R5



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ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.776 of 2018 in O.S.No.237 of 2013.

2. The suit in O.S. No.237 of 2013 is filed by respondents 1 and 2 before the Subordinate Court, Pollachi for partition and separate possession and for consequential reliefs. The suit property consists of land and building.

3. The respondents 3 to 5 in this Revision Petition are the legal heirs of one Mr.K.Alagesan who is none else than the brother of the plaintiffs. During the pendency of the suit, the Revision Petitioner who is a third party to the suit, filed a petition in I.A. No.776 of 2018 to implead him as a party to the suit on the ground that he is in possession of a few items of the suit properties as a tenant under one Rajalakshmi, who is the mother of the plaintiffs under an oral lease. Except tenancy, the petitioner has not pleaded any other right. The trial Court dismissed the petition and the petitioner/third party has filed this revision against this order.

4. The Revision Petitioner has also admitted that the plaintiffs/Respondents 1 & 2 have filed the suit in O.S. No.98 of 2007 before the District Munsif Court, Pollachi disputing the tenancy in favour of the petitioner.



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It is mentioned by the petitioner in the grounds of revision that he has also filed a suit in O.S. No.69 of 2017 against the parties in the present suit for permanent injunction. In such circumstances, it is contended by the petitioner's counsel that he is necessary and proper party and that the suit for partition cannot be decided without his presence as a tenant. The Lower Court dismissed the impleading application holding that the petitioner is not a necessary party, and the suit filed for partition can be disposed of without impleading the petitioner, who has claimed only a right of the tenancy.

5. This Court is unable to find any error in the order dismissing the petition filed by the petitioner to implead him as a party. It appears that the tenancy itself is in dispute. However, the issue need not be decided in the suit for partition filed by the plaintiffs as against the legal representatives of their brother. The only apprehension expressed by the Revision Petitioner is that the respondents 1 and 2 under the guise of disputing his tenancy are making attempts to drive the petitioner out under the guise of executing the final decree for partition. The petitioner has successfully dragged the proceedings from the year 2018. Even assuming that the petitioner is in possession as a tenant, the petitioner cannot be evicted without due process. In the suit for partition, it is unnecessary that the



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tenant who claims tenancy under one of the party should be impleaded as a matter of right. May be the tenant can implead himself or can be impleaded by the plaintiffs at the time of executing the final decree, if the tenant is in possession of the property so that he will not refuse to attorn this tenancy.

6. In the present case, the respondents have filed a counter in I.A. No.776 of 2018 to the effect that even if the petitioner is a tenant, separate proceedings will be initiated against him for recovery of possession only after the suit is decreed. As pointed out by the respondents, the tenant cannot be evicted in a suit for partition. Though the tenant can be in certain circumstances impleaded as party for an effective adjudication, he is not necessary or a proper party in the present case. The petitioner has referred to the pendency of two suits where he can establish his status as tenant. Having regard to the facts and circumstances of the case, this Civil Revision Petition is dismissed as devoid of merits.

7. At request of the learned counsel appearing for the respondents, the lower Court is directed to expedite the trial and dispose of the suit as expeditiously as possible preferably within a period of four (4) months from date of receipt of the copy of this order. Connected Miscellaneous Petition is also dismissed. No costs.



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Index:Yes / No

Internet:Yes / No

Speaking / Non-Speaking Order
rkp

To

The Subordinate Judge,
Pollachi.

S.S.SUNDAR, J.,



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