

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4436 of 2013
and M.P.No.1 of 2013

Easwaran

.. Petitioner

Vs.

1.Nallappan

2.Palanisamy

3.The Executive Engineer/Administrative Officer – 3,
Salem Housing Board,
Ayyamthirumaligai,
Salem 8.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.09.2013 made in I.A.No.188 of 2012 in O.S.No.162 of 2011 on the file of the Additional District Court, Namakkal.

For Petitioner : Mr.S.Saravanakumar
for M/s.I.Abrar MD Abdullah

For Respondents : Mr.S.R.Varun Karthik (For RR1 & 2)
for M/s.C.Jagadish

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

The petitioner is plaintiff in O.S.No.162 of 2011 on the file of the Additional District Court, Namakkal. He filed the said suit for partition of house property mentioned in the schedule, by dividing the same into three equal shares and allot one share to the petitioner and for a permanent injunction, restraining the 3rd respondent from executing the sale deed in favour of the respondents 1 and 2. The respondents 1 and 2 filed written statement and are contesting the suit. The petitioner filed I.A.No.188 of 2012 under Order VI Rule 17 of C.P.C., to amend the plaint to include 6 items of the properties belonging to his mother and two items of the properties belonging to his father. According to the petitioner, only when he gone through the case bundle, he came to know that these properties were not included for partition. Unless these properties are included in the suit schedule, the suit will be affected by partial partition and prayed for allowing I.A. Before the Trial Court, the

respondents 2 and 3 remained exparte. The 1st respondent filed counter affidavit and denied all the averments. According to the 1st respondent, his mother settled item nos.2 and 4 to 7 on the 1st respondent, by the deed of settlement dated 12.07.2002. As far as item no.3 is concerned, the petitioner's mother has executed a will, bequeathing the property to the 1st respondent. Item Nos.8 and 9, which are sought to be included by way of amendment, were already partitioned in O.S.No.470 of 1972, on the file of Munsif Court, Namakkal and the petitioner and respondents 1 and 2 were each allotted 1/3rd share of the said property. The petitioner sold the 1/3rd share allotted to him to the wife of the 1st respondent by the sale dated 09.07.2001 and 2nd respondent sold his share allotted to him by sale deed dated 26.02.2001 to the 1st respondent. From the date of settlement deed, sale deeds and the death of the mother of the parties, these properties are in separate possession and enjoyment of the 1st respondent. The patta was also issued in the name of the 1st respondent and hence, these properties are not necessary to be included for partition and prayed for dismissal.

2.The petitioner filed reply affidavit and denied the averments in the counter affidavit. The petitioner submitted that the properties in the name of the mother were purchased from and out of the joint family properties of father and hence, mother has no right to settle the property.

3.The learned Judge considering the averments in the pleadings and documents filed by the 1st respondent, dismissed I.A.No.188 of 2012 filed for amendment, holding that the amendment of plaint would change the character of the suit and introduce new cause of action.

4.Against the said order of dismissal of I.A.No.188 of 2012 in O.S.No.162 of 2011, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner submitted that the learned Judge failed to see that self-acquired properties of mother and father were not included in the suit schedule for partition. The suit will

be bad for partial partition if these properties are not included for partition. The learned Judge erroneously believed that mother of the parties settled the properties on the 1st respondent. The learned Judge erred in holding that by amendment, the nature of suit and character of suit will be changed and new cause of action will be introduced and prayed for setting aside the order passed in I.A. and allowing the Civil Revision Petition.

6.The learned counsel appearing for the respondents 1 and 2 submitted that properties sought to be included by way of amendment are in separate possession and enjoyment of the 1st respondent and patta is in the name of the 1st respondent. The mother of the parties settled item nos.2, 4 to 7 on the 1st respondent and in respect of item no.3, the mother has executed a will, bequeathing the said property to the 1st respondent. Item Nos. 8 and 9 are the properties of father, which were already partitioned and petitioner also sold his 1/3rd share to the wife of the 1st respondent by deed of sale dated 09.07.2001. Now, the petitioner cannot claim partition of these properties. The learned Judge considered all the

materials and rightly dismissed the I.A. There is no error in the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioner as well as the respondents 1 and 2 and perused the entire materials available on record.

8. From the above materials, it is seen that the petitioner filed suit for partition in respect of the house property. The respondents 1 and 2 filed written statement and suit was listed for trial. The petitioner filed I.A.No.188 of 2012, under Order VI Rule 17 of C.P.C., for amendment of plaint, to include the properties of his mother and father. According to the 1st respondent, the mother has already dealt with the properties by way of deed of settlement and will, in favour of the 1st respondent. The patta is also issued in the name of the 1st respondent. The 1st respondent is in separate possession and enjoyment of these properties. The petitioner filed reply affidavit and has contended that the properties standing in the name of the mother are joint family properties purchased from and out of

the income of the father and mother has no right to settle those properties on the 1st respondent. On the other hand, in the grounds of revision, the petitioner has stated that the property sought in the name of the mother are also her self-acquired properties. If properties of mother are self-acquired properties, she can settle the properties according to her wish. If the petitioner claims that properties are joint family properties purchased from and out of the income of the father, the remedy available to the petitioner is to get the settlement deed declared as invalid.

9.As far as the properties of father are concerned, it is the case of the 1st respondent that the said properties were already partitioned in O.S.No.470 of 1972 and petitioner was allotted 1/3rd share in the said properties, which he has sold to the wife of the 1st respondent on 09.07.2001 itself. The petitioner has not denied the said averment in his reply affidavit. The learned Judge, considering all the above materials and documents relied on by the 1st respondent, dismissed I.A., by giving valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

09.08.2021

Index :: Yes/No
gsa

To

The Additional District Judge,
Namakkal.

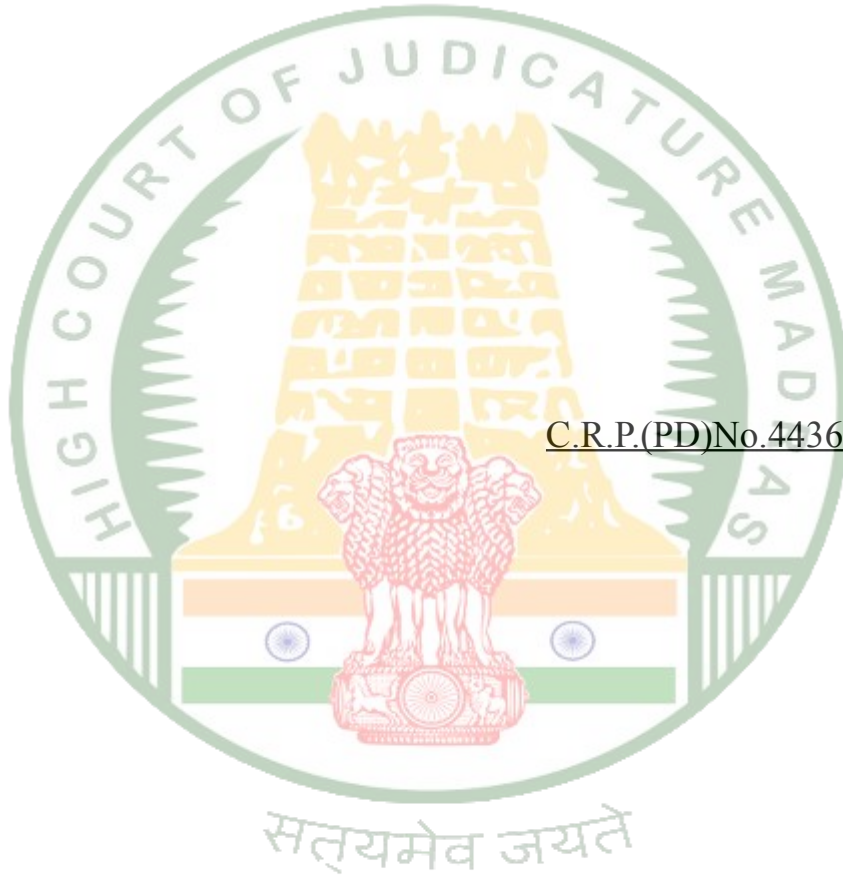


WEB COPY

C.R.P.(PD).No.4436 of 2013

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.4436 of 2013

WEB COPY

09.08.2021