

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 621 of 2021

And

C.M.P.No. 5342 of 2021

Adhiammal (died) ... Nil/1st Petitioner/1st Plaintiff

Kasinathan ... Petitioner/2nd Petitioner/2nd Plaintiff

-Vs-

Balaraman ... Respondent / Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree made in I.A.No.441 of 2019 in O.S.No.9 of 2018 on the file of the District Munsif, Gudiyattam, Vellore District, dated 08.02.201.

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For Petitioner : Mr. K.A.Ravindran

For Respondent : Mr. T.R. Rajaraman
for Mr. A.NR. Jayaprathap

ORDER

Heard Mr. K.A.Ravindran, learned counsel for the revision petitioner and Mr. T.R.Rajaraman, learned Senior Counsel instructed by Mr. A.NR. Jayapraphap, learned counsel on behalf of the respondent.

2. This Revision Petition has been filed by the plaintiff in O.S.No. 9 of 2018 now pending on the file of District Munsif Gudiyattam, Vellore District. The revision petitioner is aggrieved by the order dated 08.02.2021 in I.A.No. 441 of 2019, which Interlocutory Application had been filed by the revision petitioner/plaintiff.

3. The suit in O.S.No. 9 of 2018 had been filed for declaration of title over the 'B' schedule which had been described in the plaint and for consequential injunction to protect possession and also for declaring that the inclusion of 'A' schedule property which again has been described to the schedule of the plaint by the defendant in a registered partition deed dated 27.11.2013 is unlawful and to cancel the same and also for costs of the suit.

4. A written statement had been filed by the defendant. It must also be kept in mind that both the plaintiff and the defendant claim the properties through the same ancestral lane, namely, through Varadayya Naidu and Gengulayya Naidu, who had a joint patta at one point of time with respect to the plaint 'A' schedule property which is the larger extent of property. The plaint 'B' schedule property had been described in the plaint as having S.No. 255/3, New Sub division No.255/3B measuring Hectare 0-5.50 (Acres 0-14) and is a terraced house. There is also another property, namely 'C' schedule again described in the plaint having S.No. 255/3B and measuring 0.5.50 hectare and again is a thatched house.

5. It is claimed by the plaintiff that 'B' schedule belongs to the plaintiff and 'C' schedule belongs to the defendant. It is further claimed that 'A' schedule belongs to both the plaintiff and the defendant.

6. The suit could have proceeded for trial but there was one intervening circumstance, namely, the filing of I.A.No. 441 of 2019 to amend the survey numbers given in 'B' schedule and 'C' schedule. In 'B' schedule, it was sought that the survey number should be changed from

255/3B to 255/3B2 and in 'C' schedule, the survey number was sought to be changed from 255/3B to 255/3B1. This sub division had admittedly happened during the pendency of the suit.

7. It has been very vehemently argued by Mr. T.R.Rajaraman, learned Counsel that such act of sub division was done behind the back of the defendant and they were not put in notice and they actually are unaware about this particular act of sub division by the revenue authorities. Motivation is imputed on the plaintiff.

8. In the affidavit filed in support of the application, the plaintiff however claimed that an application to sub divide the property had been forwarded to the authorities prior to the institution of the suit and thereafter, following due procedure, the authorities subdivided the property and this happened during the pendency of the suit and a separate patta had also been given to the plaintiff in S.No. 255/3B2 and therefore, this necessitated the amendment as indicated above.

9. It is claimed by Mr.K.A.Ravindran, learned counsel for the revision petitioner that the 'B' and 'C' schedule properties do not change, the identity of the properties do not change but rather only the survey numbers which was consequent to subdivision will have to be incorporated in the plaint.

10. Mr. T.R. Rajaraman, learned Counsel however disputes such a contention and has reiterated that any subdivision done pending the suit without notice to either of the parties will necessarily have to struck down as being an act which cannot be termed as legal by any Court of law. In this connection, learned counsel has relied on **2021 1 LW 325 [G.Ramanujam Vs. State of Tamilnadu]** wherein a learned Single Judge of this Court had interfered with such subdivision undertaken during the pendency of the suit and undertaken without notice to the outstanding respondent.

11. In view of these circumstances, it is imperative that the application given for sub division by the plaintiff should be brought before this Court and the manner in which the sub division took place and whether due procedure was followed including issuing notice to the respondent

herein/defendant in the suit was also followed by the revenue authorities have to be stated by the revision petitioner/plaintiff. This is required because in the course of the order, the learned Munsif had come down heavily act on the subdivision during the pendency of the suit. Revenue officials would normally not entertain any application for sub division and even if, they receive applications they would not proceed further for subdividing the property without the lis coming to an end.

12. In the face of those strong observations by the learned District Munsif, Gudiyattam, it is only imperative that the relevant documents are produced by the plaintiff. I would therefore, though the order is well reasoned, only for the purpose to give an opportunity to the revision petitioner/plaintiff to file relevant documents, which would also be beneficial to the respondent/defendant, since they would also throw light on the manner in which the property, to which they also claim right, had been subdivided and would also enable them to move the necessary authorities questioning such act, if it is to their disadvantage, that the matter is remanded back for further hearing by giving opportunity to the plaintiff to file such documents in the Court with respect to I.A.No. 441 of 2019.

13. I am conscious that there is one more round of litigation encouraged by this Court in so far as the said Interlocutory Application is concerned. But since the subdivision touches on the very nature of the properties and the right and interest of the parties to the said properties, this exercise has to be necessarily undertaken by the plaintiff and the defendant will necessarily have to join issues on these aspects and only thereafter can the learned District Munsif, Gudiyattam, give a considered order.

14. Though placing appreciation for the nature of the order passed since the plaintiff has been given permission to file documents, the order under revision is set aside with a request to rehear the matter again after giving opportunity as stated for filing of documents in support of the rival submissions before the said Court.

15. With these observations, this Revision Petition is allowed and the matter is remanded back for further hearing. If any documents filed, the respondent/defendant will also necessarily have to be given every opportunity to file their objections to the documents or file additional

counter. If the defendant also seeks permission to file additional written statement, he may also be permitted by the learned District Munsif, Gudiyattam. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking



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