

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.1897 of 2021

and C.M.P. No.14756 of 2021

1.R.Annamalai
2.R.Venkataraman
3.A.Vasantha

...

Petitioners /
Judgment Debtors

versus

R.Ramamoorthy

...

Respondent /
Decree Holder

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 19.02.2020 passed in R.E.A.No.15 of 2017 in R.E.P.No.107 of 2015 in O.S.No.6 of 2018 on the file of the learned II Additional District Munsif, Salem and allow the Civil Revision Petition.

For Petitioners : M/s.M.Vijayamehanath

For Respondent : M/s.S.Sasikala

ORDER

This Civil Revision Petition is filed against the order passed by the learned II Additional District Munsif, Salem, in R.E.A.No.15 of 2017 in R.E.P.No.107 of 2015 in O.S.No.6 of 1998.

2. The learned counsel for the petitioners submitted that the respondent / plaintiff has filed the suit in O.S.No.6 of 1998 against the petitioners and 3 others, seeking the relief of partition. The case of the respondent is that, the suit properties, are the joint family properties of the respondent and petitioners. The respondent is entitled to 1/5th share in the suit properties and claiming his share, the suit was filed.

3. This suit was contested by the petitioners including other defendants in the suit. The learned II Additional District Munsif, Salem, decreed the suit on 27.04.2000, after contest. It is submitted by the learned counsel for the petitioners that, an appeal in A.S.No.90 of 2000 was preferred against the judgment and decree in O.S.No.6 of 1998 and that came to be dismissed on 06.09.2001. Against the said dismissal of A.S.No.90 of 2000,

the petitioners preferred Second Appeal in S.A.No.2125 of 2001 and that was also dismissed on 19.12.2006. R.E.A.No.15 of 2017 was filed under Sections 47 and 151 of C.P.C. alleging that the suit in O.S.No.6 of 1998 is barred by the law of limitation, barred under Order 2, Rule 2 of C.P.C. and by the provisions of Sections 3 and 4 of the Benami Transactions (Prohibition) Act, 45 of 1998. Final decree passed in I.A.No.243 of 2011 and confirmed in A.S.No.116 of 2011 has no force.

4. It is further submitted that the respondent filed O.S.No.229 of 1997 on the file of the learned Principal District Munsif, Salem, for the relief of permanent injunction, against his father N.Ramalingam, mother Kolandaïammal and sister-in-law Vasantha. During the pendency of the above said suit, he filed the present suit in O.S.No.6 of 1998. In O.S.No.222 of 1997, respondent pleaded that he was allotted specific extent of lands in a family arrangement in 1980. In O.S.No.6 of 1998, he introduced the same pleadings to trace the history and character of the properties, but suppressed the execution of allotment of specific properties on the family arrangement. He is precluded from staking claim for a fresh

partition in O.S.No.6 of 1998. Suit filed after 16 years for partition without impleading the legal heirs. Therefore, the suit is barred by non-joinder of proper and necessary parties, limitation, estoppel. The decree in O.S.No.6 of 1998 is inherently defective and cannot be executed. Mainly on these grounds, the petition under Sections 47 and 151 of C.P.C. was filed challenging the execution of the decree. This petition was contested by the respondent. The learned trial Judge, without considering the merits, dismissed the petition. Against the said dismissal order, the present Civil Revision Petition is preferred.

5. Considered the submissions.

6. The grounds raised in the petition filed under Sections 47 and 151 of C.P.C. were available to the petitioners even when the suit in O.S.No.6 of 1998 was pending. It appears that these grounds were not taken up at the time of trial in O.S.No.6 of 1998. The suit was decreed after contest. First Appeal filed against the judgment of the trial Court and the Second Appeal filed against the judgment of the appellate Court, came to be dismissed. Final decree was passed in I.A.No.243 of 2011 and confirmed in

A.S.No.116 of 2011. Therefore, it is not open to the petitioners to raise all these issues by way of filing petition under Sections 47 and 151 of C.P.C. The attempt made by the petitioners to raise these issues, is nothing but an abuse of process of law.

7. Therefore, this Court finds no reason to interfere with the order of the learned trial Judge. Accordingly, the order passed by the learned II Additional District Munsif, Salem, dated 19.02.2020 in R.E.A.No.15 of 2017 in R.E.P.No.107 of 2015 in O.S.No.6 of 1998 and is hereby confirmed.

8. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

14.09.2021

Speaking order / Non-speaking order
Index : Yes / No

psa / sri

G.CHANDRASEKHARAN, J.

psa / sri

To

The II Additional District Munsif, Salem.



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