

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2021

PRONOUNCED ON : 09.08.2021
CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(N.P.D) No. 2936 of 2018
and CMP No. 17105 of 2018

S.Jeevanandam Petitioner

Vs

K.P.V.Srinivasa Mudaliar (Died)

1. S.Santhanam

Muthammal (Died)

2. Pachaiyappan

3. Ulaganathan

4. Kumarasamy

..... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.07.2018 made in I.A.No.242 of 2018 in I.A.No.880 of 2015 in O.S.No.29 of 1966 on the file of the Principal District Munsif, Kancheepuram.

For Petitioner : Mrs.Chitra Sampath, Senior Counsel
for Mr.A.E.Ravichandran
For R1 : Mr.S.Parthasarathy, Senior Counsel
for Mr.M.Guruprasad
For R2 to R4 : Given up

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 18.07.2018 made in I.A.No.242 of 2018 in I.A.No.880 of 2015 in O.S.No.29 of 1966 on the file of the Principal District Munsif, Kancheepuram, thereby rejected the petition filed not to confirm the sale, pending disposal of the suit in O.S.No.54 of 2016.

2. The petitioner is the third party. The first respondent is the plaintiff and the respondents 2 to 4 are the defendants. The father of the first respondent filed a suit for partition in O.S.No.29 of 1966 as against the respondents 2 to 4 in respect of the suit property. It was decreed on the consent of the parties. Aggrieved by the same, the respondents 2 to 4 filed an appeal suit in A.S.No.51 of 1970 and they made endorsement in the appeal suit. Accordingly, a final decree was passed directing the parties to apply under provisions of Sections 3 and 4 of the Partition Act. Thereafter, the deceased plaintiff executed a Will in favour of the first respondent herein dated 03.08.1998.

3. On the strength of the Will, the first respondent herein filed an application in I.A.No.1073 of 1999 under Order 22 Rule 3 and 4 of

Code of Civil Procedure to implead himself as second plaintiff. It was allowed and aggrieved by the same, the petitioner herein filed a Civil Revision Petition before this Court in CRP No.1200 of 2004 and the same was dismissed with liberty, if the petitioner wants to challenge the Will, it is open to the petitioner to do the same. Thereafter, the first respondent herein filed an application in I.A.No.611 of 2009 in O.S.No.29 of 1966, to appoint an Advocate Commissioner to effect partition and allot 1/4th share in the suit property and the same cannot be sold out since it is impartible in nature and as such it was dismissed with a liberty to file a petition under Section 3 of the Partition Act for effective partition in accordance with the final decree.

4. Accordingly, the first respondent herein filed an application in I.A.No.880 of 2015 in O.S.No.29 of 1966 to invoke Section 3 of the Partition Act. It was allowed by an order dated 24.03.2016 and the first respondent found to be highest bidder and he was directed to deposit the sale price of Rs.1,06,00,000/- on or before 05.06.2018. On 28.04.2018, the first respondent, after deducting his 1/4th share, deposited the remaining amount of Rs.79,50,000/-. It was challenged by the fourth

respondent herein in CRP.No.1604 of 2018 before this Court. The said Civil Revision Petition was also dismissed by this Court by an order dated 12.06.2018 and confirmed the order passed in I.A.No.880 of 2015. While dismissing the CRP No.1604 of 2018, this Court directed the first respondent to deposit the sale consideration. However, even before the said order, came to be passed, the first respondent had deposited the amount on 28.04.2018. At that juncture, the petitioner filed a petition not to confirm the sale in favour of the first respondent herein in pursuance to the order passed in I.A.No.880 of 2015 and the same was rejected as not maintainable. Aggrieved by the same, the present Civil Revision Petition is filed.

5. Mrs.Chitra Sampath, learned Senior Counsel appearing for the petitioner submitted that the petitioner is none other than one of the son of the deceased sole plaintiff. After the demise of the sole plaintiff, the petitioner has a right to safeguard his rights and as such, the petition is very much maintainable, and the Court below, without even ordering notice, mechanically rejected the same as not maintainable. In respect of the suit property, the first sole plaintiff filed a suit as against his brothers

for partition in O.S.No.29 of 1966. The appeal suit was decreed and he was allotted 1/4th share. Accordingly, the deceased plaintiff was allotted 1/4th share in the suit schedule property. The suit schedule property is impartible and as such, the parties are directed to file a petition under Section 3 of the Partition Act. The first respondent herein, claiming under the Will dated 03.08.1998 executed by the deceased plaintiff, was impleaded as second plaintiff in the suit. Therefore, even assuming that the Will is true, the first respondent can represent in respect of the share of the deceased father alone and he cannot solely purchase the other 3/4th share, which were allotted to his paternal uncles, i.e., respondents 2 to 4 herein, since the petitioner is being one of the son of the deceased plaintiff, he has equal right to purchase the suit property. But without even impleading the legal heirs of the deceased plaintiff, the Court below auctioned the suit property.

6. The learned Senior Counsel further submitted that the petitioner filed a suit for partition in O.S.No.54 of 2016 in respect of the property which was allotted to the deceased plaintiff wherein the Will dated 03.10.1998 said to have been executed by him in favour of the first

respondent is the subject matter and until the Will is proved in the manner known to law in the said suit, the first respondent's right is confined only as a legal representative who can represent the other legal heirs of the deceased plaintiff under Order 22 Rule 4 of CPC. In fact, this Court by an order dated 14.09.2006 in CRP No.1200 of 2004 filed as against the order passed in I.A.No.1073 of 1999 in O.S.No.29 of 1966 held that as held in the case of ***Muniappa Nadar and others Vs K.V.Duraipandi Nadar*** reported in ***AIR 1988 Madras 117***, an enquiry under Order 22 Rule 5 of CPC though held, after examination of witnesses is nevertheless summary in character and is not an appealable order. Further, the question whether a person can be permitted to be brought on record as the legal representative of a deceased person for the purpose of continuing the proceedings already begun, is a matter collateral to the suit. However, this Court dismissed the Civil Revision Petition with liberty to the petitioner to rely on the said judgment and directed the Court below to deal with in accordance with law. The Court below, while considering the application filed under Section 3 of the Partition Act in I.A.No.880 of 2015, had not followed and mechanically

ordered in favour of the first respondent herein. Therefore, she prayed not to confirm the sale in favour of the first respondent herein till the disposal of the suit in O.S.No.54 of 2016.

7. Per contra, Mr.S.Parthasarathy, learned Senior Counsel appearing for the first respondent submitted that the deceased plaintiff filed a suit for partition. It was decreed in the appeal suit. Thereafter, he executed a Will dated 03.08.1998 bequeathing his share in the suit property in favour of the first respondent. Therefore, his mother, brother and three daughters have no right in the suit properties and they are unnecessary parties to the suit. Accordingly, he filed a petition in I.A.No.1073 of 1999 and the same was allowed by an order dated 09.03.2004 in which, the petitioner, his mother and sisters were the parties. In fact, it was challenged by the petitioner herein in CRP No.1200 of 2004 and the same was also dismissed. Thereafter, the petitioner without any partition, he executed a settlement deed in respect of un-divided $\frac{1}{2}$ share in the father's share of $\frac{1}{4}^{\text{th}}$ in favour of his daughters on 29.12.2009. As directed by the Appellate Court, the first respondent filed I.A.No.880 of 2018 under Section 3 of Partition Act to

bring the suit property for auction among sharers. As per the Will, the first respondent alone represented the estate of the deceased father. Therefore, in the interest of his father's estate, he purchased his father's 1/4th share and also 3/4th share of the respondents 2 to 4 herein. The said sale also duly confirmed by this Court and accordingly deposited the entire amount, after deducting the amount, it pertaining to the 1/4th share. The suit is of the year 1966 and even till today though the suit was decreed, he is prevented to enjoy the decree by the legal heirs by petition after petition.

8. The learned Senior Counsel appearing for the first respondent further submitted that pending the Civil Revision Petition, the sale executed in favour of the first respondent was also confirmed by the Court below. If at all, the revision petitioner has any grievance over the Will executed in favour of the first respondent, he can very well agitate the same in the suit filed by him for partition in O.S.No.54 of 2016 on the file of the District Judge-II, Kancheepuram and he prayed for dismissal of the Civil Revision Petition.

9. Heard, Mrs.Chitra Sampath, Senior Counsel appearing for the petitioner and Mr.S.Parthasarathy, Senior Counsel appearing for the first respondent and perused the materials available on record.

10. The petitioner is the third party. He is the brother of the first respondent herein. Their father filed a suit for partition in O.S.No.29 of 1966 as against his brothers i.e., respondents 2 to 4 herein. It was decreed in the Appeal Suit in A.S.No.51 of 1970 on the file of the Subordinate Court, Kancheepuram, as per the endorsement made by the parties. Accordingly, final decree was passed. While being so, the deceased plaintiff executed a Will dated 03.08.1998 in favour of the first respondent bequeathing his share in the suit property. On the strength of the Will, the first respondent filed a petition in I.A.No.1073 of 1999 to implead himself as a legal heir of the deceased plaintiff. The same was allowed and confirmed by this Court in CRP No.1200 of 2004 by an order dated 14.09.2006. The petitioner only challenged the said order before this Court in CRP No.1200 of 2004. While dismissing the Civil Revision Petition, this Court, if the petitioner wants to challenge the Will or the findings given by the Court below, in a subsequent proceeding, it is

open to him to rely the judgement reported in *AIR 1988 Madras 117* and the Court which is seized of such matter shall deal with it in accordance with law.

11. Thereafter, the first respondent filed a petition in I.A.No.880 of 2015 under Section 3 of the Partition Act to pass an order of auctioning the property among the sharers and the same was allowed by an order dated 24.03.2016. While allowing the said petition observed that the question of impleading all the legal heirs of the deceased plaintiff doesn't arise, since all the proceedings in respect of the property are completed except execution proceedings. In fact, the daughters of the petitioner herein have already filed a petition to implead in the said petition and the same was returned and thereafter they did not choose to re-present the same.

12. In the Judgment reported in *1988 (1) LW 448*, this Court held that when the Court invoked Section 2 of the Partition Act, the parties must be directed to state the value and their willingness to

purchase the property in the sealed cover. The Court can taken the highest value and fixed the value and to proceed the matter in accordance with law. Accordingly, the Court below directed the respondents herein to file the value of the suit property and to state their willingness to purchase the property in a sealed cover. Accordingly, the respondents 2 and 4 did not submit any sealed cover and they were also called absent and they were set ex-parte on 22.01.2018. The petitioner filed his sealed cover and quoted the value at Rs.1,06,00,000/-. The third respondent herein, instead of filing a sealed cover, filed a memo seeking for open auction between the sharers. Therefore, the plea of the first respondent was accepted and he was directed to deposit the entire sale consideration on or before 05.06.2018. In the mean while, the said order was challenged by the third respondent herein in CRP No.1604 of 2018 and this Court dismissed the Civil Revision Petition by an order dated 12.06.2018 and directed the first respondent to deposit the entire sale consideration.

13. In fact, even before the said order, the first respondent had deposited the sale consideration after deducting his father's share of 1/4th

in the suit schedule property. Accordingly, the sale was confirmed in favour of the first respondent herein.

14. The Senior Counsel appearing for the first respondent contended that the first respondent can purchase only the share of their father i.e. 1/4th share in the suit property and to purchase others share i.e. 3/4th share which was allotted to respondents 2 to 4, in which the petitioner should have been permitted to participate in the auction. Admittedly, the petitioner is not a party in any of the proceedings. In fact, the first respondent herein filed I.A.No.1073 of 1999 to implead himself as a legal representative of his father, on the strength of the Will dated 03.08.1998 and the same was allowed by an order dated 09.03.2004 and the same was also confirmed before this Court in CRP No.1200 of 2004 dated 14.09.2006. Therefore, the petitioner cannot claim his participation in the auction conducted between the sharers in O.S.No.29 of 1966. It is also pertinent to note that the petitioner also filed a suit in O.S.No.54 of 2016 on the file of the District Judge-II, Kancheepuram for partition along with the 1/4th share of the suit schedule property, which was allotted in favour of the deceased plaintiff.

Therefore, the petitioner filed the present petition only to stall the proceedings and nothing else. Admittedly, the property, which was allotted to the deceased plaintiff, i.e., 1/4th share in the suit property, was purchased by the first respondent herein is subjected for partition in O.S.No.54 of 2016. Therefore, the Court below rightly dismissed the petition as not maintainable and this Court finds no infirmity or illegality in the order passed by the Court below.

15. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

09.08.2021

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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

To
The Principal District Munsif,
Kancheepuram.

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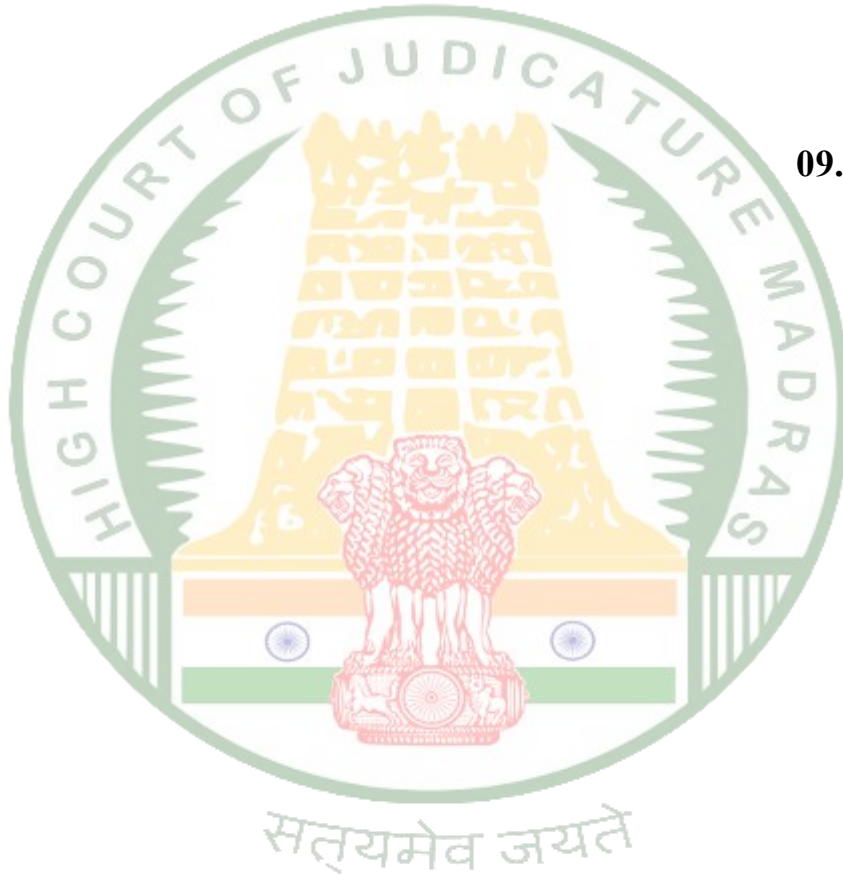


G.K.ILANTHIRAIYAN.J,

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Pre-delivery order in
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