

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2021

PRONOUNCED ON : 28.04.2021
CORAM

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

C.R.P.(PD) No.556 of 2018

S.Ramanan (Died)

M/s.Auromira,
Partnership Firm,
rep by its Managing Partner,
Sri Veerapaneni Ravikanth
[Appellant-2 brought on records as
LRs of the deceased sole appellant viz.,
S.Ramanan vide Court order dated
14.11.2019 made in CMP No.8745 & 8748 in
CRP 531 & 556 of 2018 (RSKJ)] ... Petitioner

Vs.

- 1.D.Neelaveni
- 2.D.Thirugnanasambandam
- 3.D.Anuradha
- 4.D.Chandrasekar
- N.Kaliammal (deceased)
- 5.G.Sagunthala
- 6.G.Sathish
- 7.G.Meenakshi
- 8.N.Vardharajan
- 9.N.Muralidharan

10.M/s.Coimbatore Property India (Pvt). Ltd.,
No.8, Rakavis Square,
Rahuman Sait Colony,
Opp.Muthoot Finance,
Sowripalayam Road,
Coimbatore – 45.

11. Arulmigy Patteswara Swami Temple,
rep. by its Executive Officer,
Perur, Coimbatore – 641 010. Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.12.2017 made in I.A.No.273 of 2017 in O.S.No.574 of 2011 on the file of the I Additional District Judge, Coimbatore.

For Petitioner : Mr.AR.L.Sundaresan
For R1 to R4 : Mr.S.Mukund
for M/s.Sarvabhauman Associates
For R5 to R10 : Notice served
For R11 : Mr.R.Bharanidharan

ORDER

The Civil Revision Petition is filed against the order dated 20.12.2017 made in I.A.No.273 of 2017 in O.S.No.574 of 2011 on the file of the I Additional District Judge, Coimbatore, thereby dismissing the petition filed by the petitioner for rejection of plaint.

2. The petitioner is the 7th defendant and the respondents 1 to

4 are the plaintiffs. The respondents 1 to 4 filed a suit for partition, declaration and permanent injunction in respect of the suit property. While pending the suit, the petitioner filed a petition for rejection of plaint and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition.

3. Mr.AR.L.Sundaresan, learned Senior Counsel submitted that the suit itself is hit under Order 2 Rule 2 of the Civil Procedure Code. Since, already their father filed a suit in O.S.No2361 of 2006 for injunction and the same was dismissed for default. Pending suit, the father of the respondents 1 to 4 died and they have filed I.A.No.358 of 2010 to implead themselves as legal heirs of their father and the same was dismissed for default by the Judgment and Decree dated 21.06.2011. The suit itself is barred by limitation. Since, the properties were already partitioned by the registered Partition Deed of the year 1973. Therefore, the respondents 1 to 4 ought to have filed a suit within a period of three years to set aside the said Partition Deed of the year 1973. The suit is filed for partition and the respondents 1 to 4 are not in possession of the property. Since, the entire property was purchased by the petitioner in

the Court Auction Sale in the execution proceedings and as such there is no constructive possession of the suit property by the respondents 1 to 4 herein. Therefore, the suit was not properly valued and liable to be rejected.

4. He further submitted that the 11th respondent herein also filed a suit in O.S.No.509 of 2016 for declaration of the very same property, in which the petitioner as well as the respondents 1 to 4 are the parties. They filed a suit on the strength of the Gift Deed dated 18.07.1927 and as such the present suit is liable to be rejected. In fact, the stand taken by the petitioner in the present suit would not effect the trial in O.S.No.509 of 2016. The respondents 1 to 4 have taken specific stand that the Trust property and as such it cannot be declared in favour of the 11th respondent herein in O.S.No.509 of 2016. When it is the Trust property, the respondents 1 to 4 are not entitled for any partition in the suit property. Therefore, the suit cannot be sustained and it is liable to be rejected.

5. Per contra, the learned counsel for the respondents 1 to 4 submitted that the points raised by the petitioner are question of fact and

it can be decided based on the evidence during the trial. It cannot be decided in the rejection of plaint application. The principle of res-judicata under Order 2 Rule 2 of the Code Procedure Code would not arise. Since, the father of the respondents 1 to 4 filed a suit in the year 2006 that too for injunction in respect of the suit property. The entire issues raised by the petitioner are factual in nature and those issues can be decided only in the main suit. The issue of court fee also can be decided during the trial. Therefore, all the issues raised involves question of fact and law and on that score the plaint cannot be rejected.

6. He further submitted that already the petitioner filed a Civil Revision Petition before this Court in CRP.No.740 of 2017 to strike off the plaint and the same was dismissed for the reason that the suit is of the year 2011 and the Trial Court is directed to dispose of the suit within the stipulated time on merits. While being so, the petitioner without proceed with the trial, the petitioner filed a petition for rejection of plaint and the Trial Court rightly dismissed the same and as such it does not warrant any interference by this Court. In support of the contention, he also relied upon the Judgment reported in **2010 (10) SCC 141**.

7. The learned counsel for the 11th respondent submitted that in respect of the very same property, the Temple filed a suit for declaration in O.S.No.509 of 2016 on the file of the First Additional District Court, Coimbatore, in which, the petitioner as well as the respondents 1 to 4 are the parties.

8. The specific case of the Temple is that as per the “Deed of Dharma” dated 15.12.1927, Subramania Thevar and Solayammal set apart for the religious purpose. After execution of “Deed of Dharma” dated 15.12.1927, the property become the property for religious purpose and no member of the family can claim share over the same. The respondents 1 to 4 suppressed the same and filed the present suit. The recital of the Dharma Deed clearly shows that the suit property is set apart for Karthigai Deepa Urchavam for the temple. After the death of Nataraja Thevar, who was the elderly person of the family of Subramania Thevar, one of his son Gnana Desikan have taken over the property and continued the Karthigai Deepa Urchavam, as per the recital of the Gift Deed dated 15.12.1927. The property should be cultivated by the family members and has to perform the Karthigai Deepa Urchavam from the

income of the property. While being so, the suit property was allotted in favour of the said Gnana Desikan by the Partition Deed dated 14.9.1973. When the suit property was already gifted to the temple, it was subjected for the partition by the Partition Deed dated 14.09.1973 and as such the Temple filed a suit for declaration.

9. Even according to the respondents 1 to 4, the property was already partitioned by the Partition Deed dated 14.09.1973 and as such they are not entitled to file the present suit for partition once again for the very same property. He further submitted that in fact, the petitioner herein also filed a petition to reject the plaint and the same was dismissed. Aggrieved by the same, the petitioner also preferred a Civil Revision Petition before this Court in CRP No.531 of 2018 and the same was dismissed. If the present Civil Revision Petition allowed the findings of this Court would effect the entire trial of the suit filed by the 11th respondent in O.S.No.509 of 2016 for declaration.

10. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the petitioner ; Mr.S.Mukund, learned counsel appearing on behalf of respondents 1 to 4 and Mr.R.Bharanidharan,

learned counsel appearing on behalf of the 11th respondent.

11 (i). The petitioner is the 7th defendant in the suit filed by the respondents 1 to 4 herein for partition, declaration and injunction in respect of the suit property. Originally, the suit property belonged to one Subramania Thevar and his mother Solayammal. They jointly executed the registered “Deed of Dharma” dated 15.12.1927 in favour of the 11th respondent herein. The recital of the said Deed is clear that from the income of the suit property after deduction of tax etc., not less than the amount of Rs.50/- should be spent for the Karthigai Deepa Urchavam in the Perur Patteswaran Temple, Coimbatore. The legal heirs have no right to encumber the suit properties and if they created any encumbrance it is void.

(ii) After the life time of the said Subramania Thevar and Solayammal, the property was devolved on Nataraja Thevar, who is the son of said Solayammal. After demise of him, his legal heirs, his wife and three sons devolved the properties. During their life time by the Partition Deed dated 14.09.1973, the suit properties along with the other

properties were allotted in favour of one of the son viz., Gnana Desikan. In fact, the father of the respondents 1 to 4 viz., Dakshinamurthy is also a party to the Partition Deed dated 14.09.1973. While being so, the said Gnana Desikan borrowed money from one Muralidharan and he obtained the decree against Gnana Desikan for a sum of Rs.1,15,000/- with interest and costs. Therefore, the suit property was brought for sale in the execution proceedings for auction. In the Auction dated 07.03.2001, the entire suit property purchased by the petitioner on 08.06.2001 and he was also issued sale certificate dated 08.10.2001. In E.A.No.1025 of 2001 by an order dated 25.01.2002, the possession was also delivered and the Execution Petition was terminated.

(iii) The petitioner purchased the suit property for a sum of Rs.11,35,000/- in the Court Auction Sale by paying a sum of Rs.2,65,000/- as stamp duty. In fact, thereafter the petitioner laid out the property and the planning approval was granted by an order dated 24.11.2005 by the Director of Town Planning, Chennai, and thereafter, the Coimbatore Local Planning Authority by an order dated 10.01.2006 and the Commissioner of Coimbatore Corporation by an order dated

23.02.2006, the plan was approved for the suit property. During the life time of the father of the respondents 1 to 4 already filed a suit in O.S.No.2361 of 2006 on the file of the District Munsif Court, Coimbatore, for declaration in respect of the suit property herein. Even according to him, the private charitable Trust was formed in respect of the suit property and only a charge was created in respect of the suit property for the Karthigai Deepa Urchavam to be performed in the 11th respondent/Temple.

12. According to him, the property was not endowed to the 11th respondent/Temple. While pending the suit, their father died and the respondents 1 to 4 filed an application in I.A.No.358 of 2010, to implead themselves as legal heirs. Thereafter, they failed to pursue the application and the same was dismissed and the suit was also dismissed on 21.06.2011. When the father of the respondents 1 to 4 filed a suit for declaration declaring that the title of the suit property in their favour by challenging the Gift Deed dated 18.07.1927 and also the Partition Deed dated 14.09.1973. The present suit is also filed on the same cause of action is directly hit under Order 2 Rule 2 of the Civil Procedure Code.

The respondents 1 to 4 are claiming 4/15th share of the suit property nearly 1/3rd share. They also sought for declaration declaring that the Sale Deed dated 07.03.2001 executed in favour of the petitioner herein in E.P.No.79 of 2000 in O.S.No.650 of 1999 on the file of the Sub Court, Coimbatore is not valid and not binding them as far as the 1/3rd share of their predecessor in title viz., their father in the suit property.

13. Admittedly, the possession of suit property was already delivered and the petitioner is in possession and enjoyment of the entire suit property and the same was recorded in E.A.No.1024 of 2001 dated 25.01.2002 and the main Execution Petition was also terminated. In fact, the right from the Partition Deed dated 14.09.1973 onwards, the said Gnana Desikan was in possession and enjoyment of the suit property till the Court Auction sale and thereafter the petitioner is in possession and enjoyment of the same. Therefore, the respondents 1 to 4 are not in possession or joint possession as averred in the plaint. The father of the respondents 1 to 4 is also one of the party to the Partition Deed dated 14.09.1973. When it being so, he filed a suit in O.S.No.2361 of 2006 for declaration of the title of the property in his favour, challenging the

Partition Deed dated 14.09.1973. In fact, the respondents 1 to 4 also filed a petition to implead themselves as the parties to the said suit and it was dismissed. Therefore, the present suit is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner. The petitioner without leave of the Court under Order 2 Rule 2 of CPC filed the present suit. Therefore, it is directly hit under Order 2 Rule 2 of CPC.

14. The specific stand of the 11th respondent herein is that the suit property was donated by the Gift Dharma Deed dated 18.07.1927 by Subramania Thevar and his mother Solayammal. Therefore, the suit property is not at all available for partition. They brought out the fraudulent Partition Deed dated 14.09.1973 and set upon the petitioner and the 6th defendant in the suit brought the suit property for Court Auction sale. Therefore, the 11th respondent was constrained to file the suit for declaration in respect of the suit property. As such, it is very clear that the respondents 1 to 4 are not at all entitled for partition and they are not also in joint and constructive possession of the suit property.

The court fee paid on the plaint is not correct and the respondents 1 to 4

are not entitled to invoke the provision of Section 37 of the Court Fee Act to pay the fixed court fee.

15. Without considering the above facts, the Trial Court has dismissed the petition and it is liable to be interfered with. Accordingly, the order passed in I.A.No.273 of 2017 in O.S.No.574 of 2011, dated 20.12.2017 by the I Additional District Judge, Coimbatore is hereby set aside. Consequently, the application in I.A.No.273 of 2017 is allowed and the plaint in O.S.No.574 of 2011 is hereby rejected. No order as to costs.

28.04.2021

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Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

सत्यमेव जयते

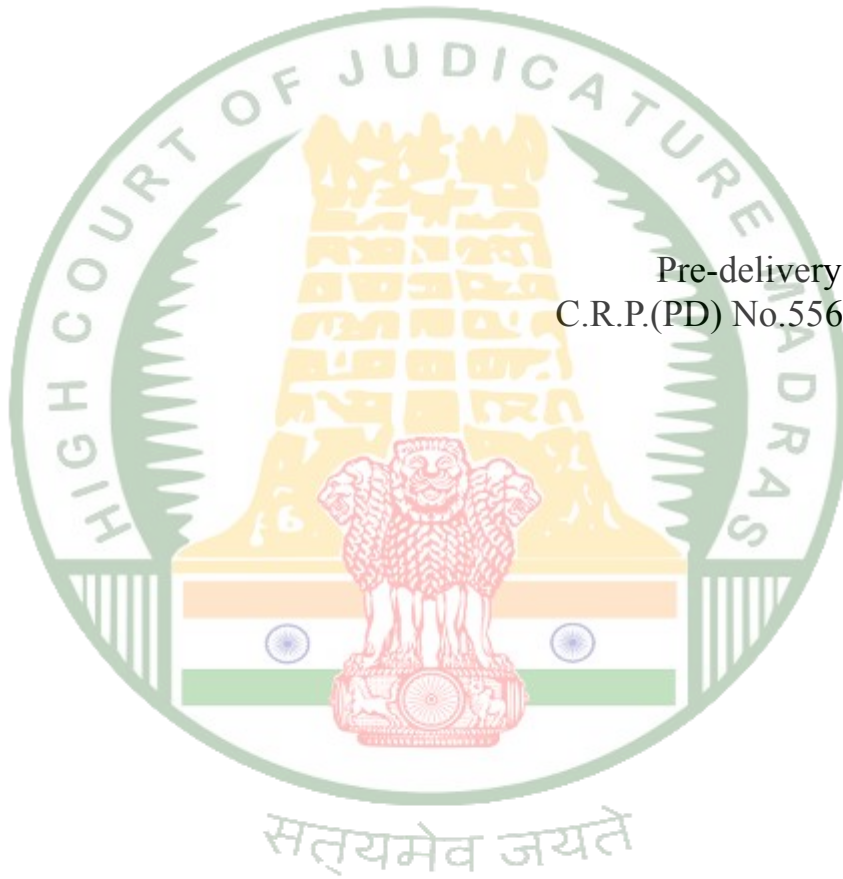
To

1. The I Additional District Judge,
Coimbatore

G.K.ILANTHIRAIYAN,J,

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2.The Section Officer,
V.R.Section,
High Court,
Madras.



Pre-delivery order in
C.R.P.(PD) No.556 of 2018

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