



C.R.P(PD)No.2374 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2374 of 2021

and

CMP.No.18060 of 2021

1.Vijaya

2.Devaraj

..Petitioners

Vs.

1.Kala

2.Karpadam

3.Bama

4.Periyasamy

5.Selvaraj

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 20.02.2020 in IA.No.79 of 2018 in OS.No.61 of 2017 on the file of the Sub-Judge, Tittakudi.

For Petitioners : Mr.Ganapathy Thangavel



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ORDER

Challenge in this revision is to the order of the learned Sub-Judge,

Thittakudi made in IA.No.79 of 2018 filed by the petitioners seeking appointment of a Commissioner to harvest the usufructuous of the coconut trees as well as the paddy crops, to sell the same by public auction and to deposit the proceeds after deducting the expenses of the auction.

2.The main suit namely, OS.No.61 of 2017 is one for partition wherein, the petitioners claim $\frac{1}{2}$ share in the suit property. The plaintiffs would contend that the defendants, who are in possession of the entire property are enjoying the income there from and therefore, the proceeds will have to be auctioned and money should be deposited into Court. The Trial Court, upon consideration of the rival pleadings held that such an order would amount to dispossessing the respondents, who are also co-sharers and hence, the same cannot be allowed as an interim measure. On the said conclusion, the learned Trial Judge dismissed the application. Hence, this civil revision petition.



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3.I have heard Mr.Ganapathy Thangavel, learned counsel appearing for the petitioners.

4.Mr.Ganapathy Thangavel would vehemently contend that the petitioners are not seeking their share to be paid over to them. Their attempt is only to ensure that the rights are safeguarded so that they would be able to realise their share of the proceeds after the suit is finally determined. I am unable to countenance the submissions of the learned counsel.

5.The suit being one for partition and the respondents being admittedly co-sharers in possession of the property cannot be dispossessed except in rarest of rare cases where, the requirement of Order 40 of C.P.C., are satisfied by the parties seeking appointment of a receiver. The relief sought for in an application filed under Order 26 Rule 9 of C.P.C., would in effect dispossess co-sharers in possession of the property.

6. As rightly pointed by the Sub-ordinate judge, the same cannot



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be done pending suit for partition. A sharer in possession cannot be dispossessed pursuant to the interim order without determination of the rights of the parties in a partition suit. Hence, I do not see any ground to interfere with the order of the Trial Court. This Civil Revision Petition fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7.Mr.Ganaapthy Thangavel would submit that there is a possibility of settlement and the matter may be referred to Lok Adalat. It is open to the counsel for the petitioner to make the same submission before the Sub-ordinate Judge, who, I am sure, will consider it favourably.

12.11.2021

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Index:No
Internet:Yes
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To:-
WEB COPY
The Sub- Judge,
Thittakudi.



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R.SUBRAMANIAN, J.

KKN

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