

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2573 of 2019

and

C.M.P.No.16928 of 2019

1. M.Arjunan
2. Kamalanathan

... Petitioners

Vs.

1. H.Krishnaveni @ Vanibai
2. Savithri
3. Suseela (Deceased)
4. Suresh
5. Dillibabu
6. kavitha
7. Rajeswari
8. Vijayakumari
9. Logammal
- 10.Soundarapandian
- 11.S.Kamalakannan
- 12.T.Madhumathi
- 13.G.Narmatha Thilagam
- 14.P.V.Lakshmi Narasimhan
- 15.V.Gowri shankar
- 16.R.Hariharan

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 24.06.2019 in I.A.No.1 of 2019 in I.A.No.9491 of 2018 in O.S.No.2538 of 2012 on the file of VI Additional City Civil Court, Chennai.

For Petitioner : Mr.R.Anandkumar

For Respondents : Mr.B.R.Shankaralingam for R1  
R2, R4 to R16 - Vacated  
R3 - died

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## O R D E R

The present Civil Revision Petition has been filed against the order passed in I.A.No.1 of 2019 in I.A.No.9491 of 2018 in O.S.No.2538 of 2012 on the file of learned VI Additional City Civil Court, Chennai by raising various grounds.

2. The case of the petitioners is that the 1st respondent / plaintiff has no locus standi to file the suit, since the property was sold in the year 2005 and 2006 itself and since there was no question of partition and hopelessly bared by limitation. Further, the 1st respondent / plaintiff was well aware of the fact of sale being carried out with respect to the property and the documents mentioned in the pleadings of the plaint does not relate to the suit schedule property and it relates to some other property. Also, the 1st petitioner had duly delivered the share of the 1st respondent / plaintiff and she is well aware of the construction taking place in the suit property and the court below erred by passing a preliminary decree for partition with respect to the suit property to and in favour of the 1st respondent / plaintiff without going into the merits of the case and erred in law. The suit in O.S.No.2538 of 2012 had ended in favour of the respondent, wherein a exparte decree granting preliminary decree for partition was passed with respect to the suit property and 1/7th share is allotted to the 1st respondent. As against the same, the petitioners along with other family members have filed I.A.No.1802 of 2017 to set aside the said exparte decree and the same was dismissed. The 1st respondent / plaintiff has filed I.A.No.9491 of 2018 in O.S.No.2538 of 2012 to appoint Advocate Commissioner with the help of Taluk Surveyor to divide the suit property into seven shares and allot one share to her and pass final decree with the report filed by the advocate commissioner in terms of the preliminary decree dated 20.09.2016. In consequence, the petitioners herein filed I.A.No.1 of 2019 in I.A.No.9491 of 2018 in O.S.No.2538 of 2012 seeking to set aside the exparte order dated 28.09.2018 passed in I.A.No.9491 of 2018. The said petition was allowed on 24.06.2019, however on payment of cost. Challenging the same, the petitioners prayed for setting aside the order dated 24.06.2019 in I.A.No.1 of 2019 in I.A.No.9491 of 2018 in O.S.No.2538 of 2012 by allowing the present Revision petition.

3. Originally, the 1st respondent, filed a suit for partition and the petitioners herein are the defendants in the suit. The 1st petitioner's father purchased the property and the property mentioned in the suit is entirely different from the property purchased by the 1st petitioner's father. The 1st

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petitioner was taking care of his father till his demise. The 1st respondent / plaintiff was living separately in her matrimonial home. The petitioner entered into an agreement of sale with one Alaguvel to sell the suit property in order to raise funds for the welfare of the family. The 1st respondent / plaintiff has also received the money and these petitioners had engaged an advocate for defending the suit, but the said Advocate passed away on 14.03.2016 and the petitioners/defendants were set exparte and the same was decreed on 20.09.2016 and only after receiving a caveat petition from the High Court on 30.09.2016, they came to know about passing of exparte decree and immediately a petition was filed to set aside the exparte decree and the said petition was dismissed by the court below without giving an opportunity.

4. The counter was filed by the respondents to the aforementioned I.A. and the same was considered by the court below, who had allowed the said petition, however, on condition that the petitioner shall pay a sum of Rs.5,000/- to the 1st respondent / plaintiff on or before 08.07.2019 and only on the payment of the said amount, the petition shall be allowed, failing which the petition shall stand automatically dismissed automatically." Aggrieved by the said order by the court below, the petitioner herein has filed the present Civil Revision Petition.

5. It is seen from the pleadings that the petitioners could not pay the said amount only on the ground that they did not have any money due to the financial constraint and they were not position to pay the said amount to the respondent, failing to pay the amount, the said petition originally stand dismissed. The learned counsel for the petitioners appeared before this Court contending that the said petition may be allowed without insisting on any money, as the petitioners intend to contest the case, he pleaded.

6. On going through the averments in this revision petition, it is clear that only due to the family circumstances, the petitioners were not in a position to pay the said money to the respondent and the reasons stated by the petitioners' counsel is that the counsel, who was engaged by them had expired and therefore, they were not in a position to proceed further with the case, since they were depending on the said counsel. However only at the later point of time, the petitioners came to know about the said decree and Judgment passed in the said suit and hence, the reasons stated by them are acceptable and accordingly, the lower court has also allowed the said petition, but on the condition of payment of cost.

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7. On the above stated facts and circumstances, this Court is of the view the payment of Rs.5,000/- has to be set aside and accordingly the same alone is deleted. This Court is inclined to modify the order passed by the court below in I.A.No.1 of 2019 in I.A.No.9491 of 2018 in O.S.No.2538 of 2012 dated 24.06.2019 only to that extent and considering the financial constraint undergone by the petitioner, the petition is allowed on its own merits.

In view of the above, the present Civil Revision Petition seeking to set aside the order dated 24.06.2019 in I.A.No.1 of 2019 of 2018 in I.A.No.9491 of 2018 in O.S.No.2538 of 2012 is allowed to the extent indicated above. In consequence, I.A.No.9491 of 2018 is restored to the file of the learned VI Additional Judge, City Civil Court, Chennai and the concerned court is directed to dispose of the same in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssd

To

1.The VI Additional Judge,  
City Civil Court,  
Chennai.

2.The Section Officer,  
VR section,  
High Court, Madras.

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+lcc to Mr.R.Anadkumar, Advocate SR.2607

LN(CO)  
CB(22/02/2021)

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