

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3781 of 2017

Mahilan

.. Petitioner

Vs.

- 1.Gandhiammal
- 2.Appu @ Samikannu
- 3.Saroja
- 4.Rajammal
- 5.Janaki
- 6.Sivagami
- 7.Jadayan
- Lakshmanan (Died)
- 8.Ammasi @ Chinnachetty
- 9.Settumani
- 10.Thangaraj
- 11.Selvi
- Thangammal (Died)
- 12.Muthu @ Muthuvediammal
- 13.Pushpa

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.12.2016 made in I.A.No.940 of 2014 in I.A.No.740 of 2011 in O.S.No.262 of 1989 on the file of the District Munsif Court, Pappireddipatti.

For Petitioner : Mr.R.Neelakadan

For Respondents : Mr.S.Ganesh (For R1)

Given up (For R2 & R3)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and decreetal order dated 15.12.2016 made in I.A.No.940 of 2014 in I.A.No.740 of 2011 in O.S.No.262 of 1989, on the file of the District Munsif Court, Pappireddipatti.

2.The petitioner is third party in I.A.No.740 of 2011, filed by the 1st respondent/plaintiff, for passing of final decree. In the said I.A., the petitioner filed the present I.A.No.940 of 2014 to implead him as 16th respondent. According to the petitioner, the 1st respondent sold the suit property to his paternal uncle i.e., the elder brother of the petitioner's father. There was a partition in the family and portion of the suit property was allotted to petitioner's father. In the oral partition, among the family

members, the suit property was allotted to the petitioner. From that date onwards, the petitioner is in possession and enjoyment of the portion of the suit property. When there was a dispute between the petitioner and sons of his paternal uncle, the petitioner filed O.S.No.102 of 2013 and I.A.No.339 of 2014 against the sons of his paternal uncle. After contest, orders were passed in I.A.No.339 of 2014, in favour of the petitioner. After sale of the portion of the suit property in the year 1983 to the paternal uncle of the petitioner, the respondents do not have any right, interest or title over the said property. Only when an Advocate Commissioner appointed in the final decree application visited the suit property, the petitioner came to know about the suit filed by the 1st respondent and preliminary decree passed in the said suit. The petitioner, being the owner of the portion of the suit property, is necessary and proper party in the final decree application and prayed for impleading him as 16th respondent in the said I.A.

3.The respondents 1 and 13 filed separate counter affidavits. The counter affidavit filed by the 13th respondent was adopted by the

respondents 3, 5 to 7, 11 and 12. The respondents opposed the said application filed by the petitioner and denied all the averments and submitted that the suit property is ancestral property of the respondents. The 1st respondent has no right to sell portion of the suit property. The said sale is not binding on the respondents. The petitioner has not filed the alleged sale deed before the Court. The petitioner's father Vijayan was working as a Village Administrative Officer. After filing of the suit, the father of the petitioner fraudulently created patta in his name and subsequently, the patta was changed in the name of the petitioner. The alleged suit in O.S.No.102 of 2013 and I.A.No.339 of 2013, filed by the petitioner is nothing to do with the suit properties and respondents are not parties to the said suit and I.A., filed by the petitioner.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, held that a final decree has to be passed only as per the preliminary decree. The title of the petitioner cannot be decided in an application for passing of final decree and dismissed the I.A.No.940 of 2014, filed by the petitioner.

5. Against the said order dated 15.12.2016 made in I.A.No.940 of 2014 in I.A.No.740 of 2011 in O.S.No.262 of 1989, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioner submitted that portion of the suit property was sold to the paternal uncle of the petitioner. In the family partition, the said property was allotted to the petitioner. The petitioner is in absolute possession and enjoyment of the portion of the suit property. The vendor of the petitioner's uncle was one of the defendants in the suit. He deliberately failed to defend the suit effectively. He acted collusively in a prejudicial manner with the 1st respondent and hence, no share was allotted to the 2nd respondent/1st defendant, in the preliminary decree. Any order passed in the suit would adversely affect the petitioner. Hence, he is entitled to be heard in the final decree application. The learned Judge ought not to have referred to the scope of final decree application to dismiss the application filed by the petitioner for impleading. In order to avoid multiplicity of proceedings, the petitioner ought to have been impleaded in the final

decree application. The learned Judge failed to see that the revenue records are in the name of the petitioner and prayed for allowing the Civil Revision Petition.

7. Heard the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials available on record.

8. From the materials on record, it is seen that the 1st respondent has filed the suit in O.S.No.262 of 1989 for partition against the respondents 2 to 13. After contest, a preliminary decree was passed on 14.03.1997. The First Appeal in A.S.No.36 of 1997, filed against the preliminary decree was dismissed. The 1st respondent filed I.A.No.740 of 2011 for appointment of the Advocate Commissioner for passing final decree. An Advocate Commissioner was appointed, he inspected and measured the suit property and filed his report. While one of the property was being measured, the petitioner and his father objected to measure the property by the Advocate Commissioner, but with the help of Police, the property was measured. The Advocate Commissioner filed report. The petitioner

filed present I.A.No.940 of 2014 for impleading himself in I.A.No.740 of 2011. According to the petitioner, portion of the property was sold by the 2nd respondent/1st defendant by the sale deed dated 04.04.1983 to the paternal uncle of the petitioner. After partition among the family members of the petitioner, the said portion of the suit property was allotted to the petitioner. According to the petitioner, the 2nd respondent/1st defendant, after selling the property, did not contest the suit properly and no share was allotted to the 2nd respondent/1st defendant. The petitioner is seeking to implead himself as a party respondent in I.A. filed by the 1st respondent, for passing of final decree, as he is owner of one of the suit properties. The said contention is denied by the respondents, both the plaintiffs and defendants. When the title of the petitioner is disputed, the same cannot be decided in the I.A. filed by the 1st respondent for passing of final decree. As rightly held by the learned Judge, the Court has to give effect to the preliminary decree by effecting the partition in the final decree application and title of the petitioner cannot be decided in the final decree application. Further, the contention of the petitioner that no share is allotted to the 2nd

respondent/1st defendant is not correct. In the preliminary decree, the share of the 1st respondent/plaintiff alone was declared and the defendants 1 and 4 to 8 were directed to be handed over the share of the 1st respondent/plaintiff. When the petitioner is claiming title by the sale deed dated 04.04.1983, alleged to have been executed by the 2nd respondent, it is for the petitioner to work out his remedy in appropriate proceedings before the competent Civil Court and he is not a necessary party in the application for final decree. The learned Judge has appreciated all the materials placed before him in proper perspective and dismissed the I.A., by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge, warranting interference by this Court.

9.The learned counsel appearing for the 1st respondent submitted that the final decree application in I.A.No.740 of 2011 was filed in the year 2011 and Advocate Commissioner appointed by the Court has inspected the property and filed report. In view of pendency of the Civil Revision Petition, I.A.No.740 of 2011 is pending and hence, prayed for a

speedy disposal. The learned District Munsif, Pappireddipatti, is directed to dispose of I.A.No.740 of 2011, as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

In the result, this Civil Revision Petition is dismissed. No costs.

05.10.2021

Index :: Yes/No
gsa

To

The District Munsif,
Pappireddipatti.



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V.M.VELUMANI, J.

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