

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

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

CRP.PD.No.568 of 2017

and

CMP.No.2835 of 2017

1. M.Murugan
2. Minor M.Neerat Srivatsav,
By Next Friend Guardian M.Murugan. 1st Petitioner. Petitioners

Vs.

1. Venkataraman
2. M.Sathianarayanan
3. Kumar @ Lakshmanakumar
4. Ramani
5. Venkatesh Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 20.02.2015 passed by the learned Principal District Judge of Salem in C.M.A.No.19 of 2011, confirming the fair order and decretal order dated 29.01.2008 passed by the learned Principal Subordinate Judge of Salem, in I.A.No.460 of 2004 in O.S.No.547 of 1998, to allow I.A.No.460 of 2004 in O.S.No.547 of 1998, on the file of the learned Principal Subordinate Judge of Salem.

For Petitioners : Mr.K.Ramanraj

For Respondents : Notice Served (No Appearance)
(for R1 to R5)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in C.M.A.No.19 of 2011 dated 20.02.2015 on the file of the learned Principal District Judge of Salem, confirming the fair and decretal order passed in I.A.No.460 of 2004 in O.S.No.547 of 1998 dated 29.01.2008, thereby, dismissing the petition for appointment of Receiver.

2. The petitioner are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for partition. While pending the suit, the petitioners filed a petition for appointment of Receiver to take possession and custody of Item Nos.4 and 5 viz., the suit properties. The Jewellery Shop under the name and style of Maragatham Jewellery Mart and the Jewellery shop with the entire stocks of the jewels and ornaments under the name and style of Sathyanarayana Jewellery. The trial Court rejected the petition for appointment of Receiver. Aggrieved by the same, the petitioners filed a Civil Revision Petition before this Court in

CRP.No.951 of 2004 and this Court by an order dated 02.08.2004 set aside the order and directed the Court below to number the application and pass orders on merits in accordance with law. Again, the Court below dismissed the same and aggrieved by the same, the petitioners filed a Civil Revision Petition before this Court in CRP.No.3544 of 2007. This Court by an order dated 15.11.2007 remanded the matter back to the trial Court for fresh consideration in I.A.No.460 of 2004. The Court below dismissed the same by detailed fair and decretal order dated 29.01.2008. Aggrieved by the same, the petitioners preferred an appeal in C.M.A.No.19 of 2011 and the same was also dismissed.

3. On a perusal of the orders by the Courts below, it is seen that the properties which were sought to be taken by the Receiver are not joint family properties. The documents were marked as Exs.R.2 to R.20 are all stands in the name of the second and fourth defendants in the suit. They also establish the fact that they are separate property and owned by them. Therefore, the appointment of Receiver for those properties cannot be considered. Further, it is settled law that the application for appointment of Receiver, the petitioners ought to have proved that they have chance to

succeed in the suit for partition. According to the defendants, the properties which were sought to be taken by Receiver are not joint family properties. Therefore, it has to be decided by letting evidence with full fledged trial. Therefore, both the Courts below rightly dismissed the application and this Court finds no infirmity or illegality in the orders passed by the Courts below.

4. Accordingly, this Civil Revision Petition is dismissed. However, the suit is of the year 1998, the Court below is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. The petitioners being the plaintiffs are directed to co-operate for trial. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.03.2021

Speaking/Non-speaking order

Index : Yes/No

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G.K.ILANTHIRAIYAN,J.

Kv

To

1. The Principal District Judge, Salem.
2. Principal Subordinate Judge, Salem.
3. The Section Officer,
V.R.Section, High Court of Madras.



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