



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.317 of 2020

and

C.M.P. (MD) No.1812 of 2020

J.Akila ... Petitioner/Petitioner/3rd Party

vs.

1.Suruli Bommiah ... 1st Respondent/1st Respondent/Petitioner

2.Balasubramani

3.G.Jeyaraj

4.Logamani

5.Vasantha ... Respondents 2 to 5/Respondents 2 to 5/
Respondents 1 to 4

6.J.Balamurugan ... 6th Respondent/6th Respondent/3rd Party

PRAYER:- This Petition is filed under Section 115 of the Code of Civil Procedure, to call for the records relating with the fair and executable order dated 17.12.2019 made in E.A.No.17 of 2018 in E.P.No.33 of 2010 on the file of the District Munsif, Bodinayakanur and to set aside the same.

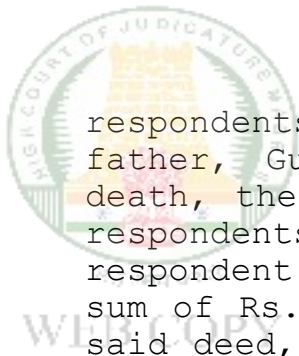
For Petitioner : Mr.R.Suriyanarayanan
For R1 : Mr.K.Guhan
For R2 to R6 : No appearance

ORDER

The third party, whose petition filed under Section 47 of the Code of Civil Procedure was dismissed, is the revision petitioner before this Court.

2.The facts, which are a run-up to the above Civil Revision Petition, are herein below narrated:-

3.The 1st respondent herein had entered into an agreement of sale with the respondents 2 to 4 in respect of the suit schedule property. The 1st respondent is none other than the brother of the



respondents 2 to 4. The property originally belonged to their father, Gurusamy Gounder as his self acquired property. On his death, the property devolved on the respondents 1 to 4 herein. The respondents 2 to 4 agreed to sell their respective shares to the 1st respondent herein under an agreement dated 08.05.2005 for a total sum of Rs.75,000/-. Since they had not come forward to execute the said deed, the 1st respondent had filed a suit in O.S.No.10 of 2006 for specific performance on the file of the District Munsif Court, Bodinayakanur. The said suit was decreed on 27.03.2010. Thereafter, the 1st respondent had filed an execution proceedings to have the sale deed executed in his favour in E.P.No.33 of 2010. When this execution proceeding was pending, the petitioner herein has come forward with a petition under Section 47 of the Code of Civil Procedure in E.A.No.17 of 2018 contending that the property is a joint family property and she being the daughter of the 3rd respondent was entitled to a 1/15th share in the suit schedule property and that the respondents 2 to 4 had no right to sell away her share in the property to the 1st respondent. This is the sum and substance of the petitioner's contention.

4.The 1st respondent had filed counter *inter alia* contending that the petitioner had deliberately waited till the dismissal of the similar petition filed by her brother in E.A.No.47 of 2011. In fact, against the dismissal of his petition in E.A.No.47 of 2011, the 6th respondent herein had filed a revision before this Court, which was also dismissed. The petitioner, who is very much aware about these proceedings, had deliberately kept quite and waited for that application to be dismissed to file the above petition.

5.The 1st respondent would contend that the respondents 2 to 4 have instigated the petitioner and the 6th respondent to file these applications, which are not maintainable. The 1st respondent also contended that there was an oral partition between the respondents 1 to 5 after the demise of Gurusamy Gounder and after this oral partition that the respondents 2 to 5 had agreed to execute the sale deed in favour of the 1st respondent by executing the agreement of sale dated 08.05.2005, the suit had been decreed as early as on 27.03.2010 and the petitioner herein has deliberately waited for over 8 years to come forward with such an application and therefore, the application deserves to be dismissed.

6.The learned District Munsif, Bodinayakanur on hearing the arguments on either party came to the conclusion that the petitioner who was fully aware of the entire proceedings had deliberately waited in the wings to file the above application. The learned Judge has also held that once the parties had entered into an oral partition, the joint family status had come to close and therefore, the petitioner did not have any right to the suit schedule property. Challenging the said application, the petitioner is now before this Court.



7.The learned counsel appearing on behalf of the petitioner would more or less adopt the contentions made in the petition in his arguments.

8.Heard the learned counsels and perused the records.

9.Admittedly, the property belonged to Gurusamy Gounder as his self acquired property. The respondents 1 to 5 are the children of the said Gurusamy Gounder. On his death, the property devolved upon the five of them as per Section 8 of the Hindu Succession Act. The parties have entered into the oral partition, which is evident from the plaint filed in O.S.No.10 of 2006. The respondents 2 to 4 have not refuted this contention. As held by the learned District Munsif, Bodinayakanur, once the parties have partitioned the property, the joint family status comes to an end.

10.Further, the petitioner's brother, who is the 6th respondent herein, had earlier filed an application in E.A.No.47 of 2011, which was dismissed after contest. After the dismissal of the said application, the present application has been filed, which clearly shows that the petitions are stage managed by the respondents 2 to 4. This is evident from the counter filed by the 3rd respondent in the present interlocutory application. The suit had been decreed in the year 2010 and the present application is filed 8 years thereafter. It is not the case of the petitioner that she is not in talking terms with her father and brothers and therefore, filing of the suit would have been known to the petitioner much earlier. The present petition is therefore devoid of merits and has been rightly rejected by the learned District Munsif, Bodinayakanur. In these circumstances, I do not find any reason for interfering with the order passed by the learned District Munsif, Bodinayakanur in E.A.No.17 of 2018 in E.P.No.33 of 2010.

11.In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

Mm



To

1. The District Munsif, Bodinayakanur.

2. The Principal District Judge, Theni.

+1 CC to M/s.K. GUHAN, Advocate (SR-34011[F] dated 10/11/2021)

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TP (CO)

TR(29.11.2021) 4P 4C