

No.4357/1965 dated 18.09.1965.

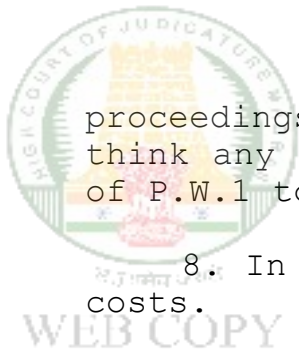
3. This claim of the plaintiff was resisted by the defendants 1 to 5 claiming that certain improvements had been made by the first defendant at his own expenses and on other grounds.

4. During the pendency of the suit, the respondents 2 and 3 herein were impleaded in the suit as the defendants 6 and 7 since they claimed that they obtained a decree for redemption of the suit property subject matter in O.S.No.5 of 2016 in O.S.No.403 of 1961. It is claimed that the suit in O.S.No.403 of 1961 was launched by the mother of the defendants 6 and 7 for redemption.

5. That suit was initially dismissed and such dismissal was confirmed by the appellate court. However the Second Appeal was allowed by this Court and a preliminary decree for redemption was granted on 18.02.1971. A final decree was also passed on 12.10.1995. The father of the plaintiff Devakadaksham was a party to the said suit. It was also claimed that the partition deed dated 18.09.1965 is not valid since it has been created during the pendency of the earlier suit for redemption filed by the mother of the defendants 6 and 7. It is also stated that execution proceedings in E.P.No.104 of 2011 seeking execution of the final decree passed in O.S.No.403 of 1961 is pending. This Court on an earlier occasion in CRP(MD) Nos.2060 and 2061 of 2019 directed the suit to be disposed of within a period of 4 months and further directed the deferral of the execution proceedings till then.

6. At this stage the petitioners/defendants 1 to 5 herein have come up with these applications seeking to re-open the evidence of the plaintiff to cross examine P.W.1. The reason assigned in the affidavit is that the defendants 6 and 7 are claiming a certain right over the property.

7. I find both the applications are only an attempt to delay the disposal of the suit. The plaintiff has come to court with a very specific case that the property belonged to his father Devakadaksham as per the partition deed dated 18.09.1965 and a preliminary decree for redemption was granted on 18.02.1971 and the Second Appeal was filed against the dismissal of O.S.No.403 of 1961. I do not see any justifiable reason for the defendants 1 to 5 to seek further cross examination of the plaintiff in the suit for partition which is based on the partition deed that was emanated during the pendency of the redemption suit in the year 1965. The trial court has dismissed the applications on the ground that the applications are not *bonafide* and on an earlier occasion the petition filed for re-opening the evidence of P.W.1 was dismissed and the defendants 1 to 5, who have not challenged the same, are not entitled to file the present applications ofcourse dismissal of interlocutory application will not operate *res judicata*. In any event, I find that these applications are only ruse to delay the



proceedings and cling on to the possession of the property. I do not think any useful purpose would be served by re-opening the evidence of P.W.1 to enable cross examination by the first defendant.

8. In fine, these revisions fail and the same are dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Cm/msa

To:

1.The Principal District Munsif,
Kuzhithurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+2 CC to M/s.J.ANANDA VALLI, Advocate (SR-4207[F],4208 dated 10/02/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-4167[F] dated 10/02/2021)

C.R.P(MD)Nos.753 and 754 of 2020
and C.M.P(MD)No.5012 of 2020

09.02.2021

MJ(CO)

KK(03.03.2021) 3P 7C