



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.11.2021**

CORAM :

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

C.R.P.(MD) No.914 of 2020

and

C.M.P.(MD) No.5986 of 2020

Dhanaraj Pandian

... Petitioner

vs.

1.Chellakumar

2.Shanmugasundara Bharathi

3.Jothi

... Respondents

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.2 of 2019 in A.S.No.50 of 2015 dated 10.06.2020 on the file of the 4th Additional District Court, Tirunelveli.

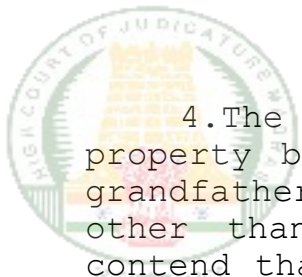
For Petitioner	: Mr.K.Udayakumar
For R2	: No appearance
For R3	: Mr.V.Kannan

ORDER

The 1st defendant, who is the 1st respondent in A.S.No.50 of 2019, in the suit in O.S.No.78 of 2012 on the file of the Additional Sub Court, Tirunelveli, has filed this revision petition, challenging the order passed by the learned 4th Additional District Judge, Tirunelveli, rejecting his application in I.A.No.2 of 2019 for receiving his written statement.

2.The facts in brief are as follows:-

3.The plaintiffs, who are the appellants in A.S.No.50 of 2019, had filed the suit for declaration that the sale deed executed by the 1st defendant in favour of the 2nd defendant dated 29.04.2010 is invalid, ineffective and inoperative to the extent of the plaintiffs' 2/3rd share and for partition of the properties allotting the 2/3rd share to the plaintiffs.



4.The case of the plaintiffs/appellants was that the suit property belonged to one Shanmugam @ Durairaj, who was the great grandfather of the plaintiffs. The 1st defendant in the suit is none other than the father of the plaintiffs. The plaintiffs would contend that under a registered deed of partition dated 20.07.1928, the properties were divided between their great grandfather and his brother. The 4th schedule of properties in the said deed was allotted to their great grandfather, namely, Shanmugam @ Durairaj. The suit schedule property was a part of this schedule No.4. After the said partition, the said Shanmugam @ Durairaj and his only son, Chellaiah, the grandfather of the plaintiffs remained in joint possession and enjoyment of the properties as coparceners.

5.Shanmugam @ Durairaj died in 1950 leaving behind his son, Chellaiah and his grandson, Dhanarajpandian, who is the 1st defendant in the above suit. Therefore, the suit property devolved equally on the said Chellaiah and the 1st defendant, who continued to be in joint possession and enjoyment of the properties. With the birth of the plaintiffs, each of them became a coparceners of the properties. While so, the 1st defendant, who was acting as Karta of the family, had sold the suit properties to the 2nd defendant under a registered sale deed dated 29.04.2010. The plaintiffs were not aware about the same since they continued to be in possession and enjoyment of the property. However, in the 2nd week of January, 2012, unidentified men entered into the property and attempted to interrupt the cutting of the trees by the plaintiffs contending that the suit property had been purchased by the 2nd defendant. Thereafter, the parties were come forward with the present suit.

6.The 1st defendant chose to remain *ex parte* through the proceedings and it was only the 2nd defendant, who had contested the suit. The learned Additional Subordinate Judge, (FAC), Tirunelveli, by his judgment and decree dated 20.02.2019 dismissed the suit and challenging the said judgment and decree, the plaintiffs had filed A.S.No.50 of 2019.

7.The 1st defendant had been called absent even pending the suit and an *ex parte* decree had been come to be passed against him. While so, pending the 1st appeal, the 1st defendant had come forward with the impugned petition seeking the leave of the Court to receive the written statement. The petition was opposed by the 2nd defendant *inter alia* contending that the application is nothing but a collusive one. After the sale in his favour, the 2nd defendant has mutated the revenue records and is in possession and enjoyment of the same. The 1st defendant had been set *ex parte* as early as on 26.02.2016 and an *ex parte* decree came to be passed against him.

8.The 2nd defendant had also stated that the 1st defendant had accompanied the plaintiffs during trial of the suit and therefore, he was fully aware about the pendency of the suit and its



proceedings, but has deliberately stayed away from contesting the suit. Even in the above first appeal, the 1st defendant had entered appearance on 25.06.2019 and the matter was being adjourned on several occasions for the arguments of the 1st defendant and the 1st defendant had been taking time, which clearly indicates that the only intention is to protract the proceedings, the learned 4th Additional District Judge, Tirunelveli on considering the materials on record proceeded to dismiss the said petition, which is now the subject matter of challenge before this Court.

9.Heard the learned counsels on either side.

10.Admittedly, the 1st defendant has been issued with summons in the suit and he has not cared to appear in response to the summons and he had been set *ex parte* as early as on 26.12.2012. The 1st defendant and the plaintiffs are all residing at the very same address, which is evident from mere perusal of the address of service. Therefore, the 1st defendant cannot claim to have no knowledge about the pendency of the proceedings. The 1st defendant has not taken any steps to set aside this *ex parte* decree though the final judgment came to be passed only on 20.02.2019 nearly 7 years after he had been set *ex parte*. That apart, Ex.PW3, who is the 2nd plaintiff, in his cross-examination has admitted that his father/the 1st defendant was present in the Court. Therefore, this clinchingly proves that the 1st defendant was aware about the suit and he has deliberately kept away from the proceedings by not participating in it. Now, at this late stage, he cannot be permitted to file his written statement and thereby, once again reopening the suit. The written statement is only an attempt to fill up the *lacuna* in the plaintiffs' case. The lower appellate Court has rightly dismissed the said petition and I do not see any convincing reason for interfering with the said order.

11.In fine, this Civil Revision Petition stands dismissed and the order passed in I.A.No.2 of 2019 dated 10.06.2020 by the learned 4th Additional District Judge, Tirunelveli is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The 4th Additional District Judge,
Tirunelveli.

2.The Additional Sub Judge, Tirunelveli.

+1 CC to M/s.K.K. UDAYAKUMAR, Advocate (SR-35135[F] dated
19/11/2021)

C.R.P. (MD) No.914 of 2020
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