



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) Nos.2227 to 2229 of 2017

and

C.M.P. (MD) No.10897 of 2017

G.Arumugam

.. Petitioner/Petitioner/
Plaintiff
In all CRPs

-vs-

1.S.Ganapathy Thevar
2.Shanmugasundaram
3.R.Rajammal
4.J.Saraswathi
5.S.Anthony Ammal
6.V.Muthulakshmi
7.V.Vasantha

.. Respondents/Respondents/
Defendants
In all CRPs

Prayer :- Petitions filed under Article 227 of the Constitution of India to set aside the fair and decretal orders passed in I.A.Nos.615, 616 and 617 of 2017 in O.S.No.374 of 2010 dated 23.10.2017 on the file of the Additional Sub Court, Tirunelveli.

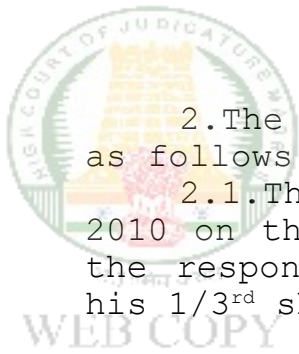
For Petitioner : Mr.H.Arumugam
(In all CRPs)

For RR 1 to 5 : No appearance
(In all CRPs)

COMMON ORDER

Aggrieved by the orders passed by the learned Additional Subordinate Judge, Tirunelveli, dismissing the following applications filed by the petitioner/plaintiff, these revisions have been filed:-

- (i) I.A.No.615 of 2017 has been filed for re-opening the case;
- (ii) I.A.No.616 of 2017 is filed to re-call P.W.1; and
- (iii) I.A.No.617 is filed to receive additional documents.



2.The brief facts, necessary to dispose of these petitions, are as follows:-

2.1.The petitioner herein has filed a suit in O.S.No.374 of 2010 on the file of the Additional Sub Court, Tirunelveli, against the respondents herein for a partition and separate possession of his 1/3rd share in the suit schedule property.

3.Originally, the suit was filed against defendants 1 and 2 and considering the fact that defendants 3 to 7 are necessary parties to the suit, they have been impleaded as defendants 3 to 7.

4.The case of the petitioner/plaintiff is that the properties have been purchased from and out of the sale of the ancestral property.

5.Defendants 1 and 2 have filed a written statement stating that the first schedule property had been purchased from and out of the income of the 1st defendant and the 1st defendant was earning income from his mutton stall and a Settlement Deed has been executed by the 1st defendant on 20.03.2003 in favour of the 2nd defendant settling the properties.

6.The petitioner would submit that much after the filing of the suit, he came to know that some of the ancestral properties have been sold by the 1st defendant to third persons. This fact came to be known only through the evidence of the respondents and when the matter was posted for arguments. The petitioner would submit that his case is that the properties have been purchased from the income derived from the sale of the ancestral property. The petitioner is all along in the mistaken belief that the family did not have any ancestral property in Naraikinaru Village. The 2nd respondent has also declared so. However, the petitioner had recently come across a Sale Deed executed by his father, the 1st defendant selling the properties in the above village. The defendants have been contending that there was no income from the ancestral property with which other properties have been purchased. Therefore, he would submit that to disprove the above statement, the documents have to be filed for which purpose, the case has to be re-opened and P.W.1 re-called.

7.The 1st and 2nd defendants have filed counter *inter alia* contending that the suit is already posted for arguments. In fact, the defendants would contend that earlier an Interlocutory Application had been filed by the plaintiff and at no point of time, he has come forward with such a contention. Further, the properties are all the self-acquired properties of the 1st defendant in which, the plaintiff had no right. The properties have been purchased from and out of the income of the 1st defendant. The reasons given for re-calling, re-opening and receiving additional documents are not supported by sufficient reasons and therefore, these applications deserve to be dismissed.



8.Learned Additional Subordinate Judge, Tirunelveli, by order dated 23.10.2017, was pleased to dismiss these applications. The applications have been dismissed only on the ground that the properties have already been sold to third parties and the petitioner has himself stated that there are no properties available in Naraikinaru Village. That apart, there is no mention about these documents either in the pre-suit notice or in the plaint. Since the properties are already in possession of the third parties, no reliefs can be claimed in respect of the said properties. Therefore, the learned Judge held that the above applications are unsustainable and accordingly, dismissed the applications.

9.Heard the learned counsel for the petitioner and perused the records.

10.This Court is of the opinion that the application to receive the documents has been filed by the petitioner for the limited purpose of proving his case that his family had ancestral properties from which income, other properties had been purchased. The documents were sought to be filed only for the limited purpose of proving the existence of the ancestral joint family property. The petitioner is not seeking any right or title to these properties. Therefore, the observation of the learned Additional Subordinate Judge, Tirunelveli, that since the properties have been sold out to third parties, no purpose would be served in allowing the applications, is totally unfounded particularly when, the entire case of the plaintiff rests on the fact that the properties in question are purchased from and out of the income earned from the joint family properties. Therefore, I do not find any substance in the orders passed by the learned Additional Subordinate Judge, Tirunelveli, dated 23.10.2017 and the same are set aside.

11.In the result, these Civil Revision Petitions are allowed. It is made clear that the documents shall be received by the learned Additional Subordinate Judge, Tirunelveli, and the marking of the same would be subject to proof and relevancy. The petitioner/plaintiff's side evidence is reopened and P.W.1 is recalled to adduce evidence. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

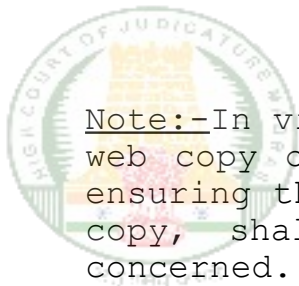
Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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To

- 1.The Additional Sub Court, Tirunelveli.
- 2.The Section Officer, V.R.Section, Madurai
Bench of Madras High Court, Madurai. (2
COPIES)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-40082[F] dated 22/12/2021)

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Dated: 21.12.2021

RD(28.01.2022) 4P 5C