



C.R.P.(PD) No.203 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.203 of 2021
and CMP.No.1946 of 2021

Maruthathal

... Petitioner / 1st Respondent

Vs.

1.Sivagnanaprakash

... 1st Respondent / Petitioner

2.Saraswathy

3.Rangasamy

4.M.Maragatham

5.Ayyammal

6.R.Maragatham

7.R.Sivakami Sundari

8.R.Uma Kalaiselvi

9.R.Gopalakrishnan

... Respondents 2 to 9 / Respondents 2 to 9

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.09.2020 made in Tr.O.P.No.16 of 2020 on the file of the Principal District Judge, Coimbatore.

For Petitioner	:	Mr.S.Mukunth
For Respondents	:	Mr.P.Mathivanan [R1] R2 to R8 [No appearance]



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ORDER

The present civil revision is filed challenging an order in Tr.O.P.No.16 of 2020 dated 15.09.2020 filed by the first respondent herein (plaintiff in O.S.No.483 of 2019), by which the learned Principal District Judge, Coimbatore has transferred O.S.No.483 of 2019 pending on the file of I Additional District Court, Coimbatore to the file of Principal District Court, Coimbatore to be tried with E.A.No.1/2019 in E.P.No.162 of 2018 in O.S.No.233/2008 pending thereon.

2. The Execution Petition is laid by the plaintiff in O.S.No.233/2008 for delivery, pursuant to a final decree for partition. The plaintiff in O.S.No.233 of 2008 is the revision petitioner herein. One of the defendants in the said suit challenges it with an application under Order XXI Rule 97 CPC and also files a suit in O.S.No.483 of 2019 on the file of District Court, Coimbatore.



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3. The learned counsel for the petitioner submitted that the revision petitioner's father had sold the property to a certain Ramasamy on 03.04.1974, and that the suit for partition was laid some 34 years after the said sale, and that the revision petitioner was also shown as a party in the sale deed executed by the petitioner's father in favour of Ramasamy.

3. The learned counsel for the revision petitioner argued that the execution petition for delivery in a partition suit stands on its own strength, and it cannot be allied with a suit for that purpose. He also submitted that it is impermissible either for the defendants or anyone claiming under the defendants to invoke Section 47 of CPC and also to file a separate suit for setting aside the decree. He also placed reliance on the ratio in *B.Dhanam Vs. P.Usha Rani and Others* [(2013) 7 MLJ 35].

4. The counsel for the first respondent submitted that the execution proceedings for delivery of property is filed, pursuant to an exparte



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decree obtained by the plaintiff, and hence the same is challenged.

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5. Responding to the same, the counsel for the revision petitioner brought to the notice of the Court, two aspects :

- (a) If the decree passed is an *ex parte* decree, the party aggrieved needs to resort to other remedies, and the remedy now resorted to is not consistent with the procedural law;
- (b) In the suit that the revision petitioner has filed in O.S.No.233 of 2008, the 8th defendant was a certain Gopalakrishnan. The above said Ramasamy's son was shown as 8th defendant. Now, the 8th defendant has assumed a different name 'Sivagnanaprakash' and has filed the suit in O.S.No.483 of 2019.

6. Heard both sides. The scope of revision is limited. There is an E.P for delivery of a property in execution of a final decree for partition, and there is also a suit. While this Court agrees with the submission of the counsel for the revision petitioner that both the



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cases E.P.No.162/2018 in O.S.No.233/2008 and O.S.No.483/2019

cannot be tried together as they are at two different stages in two different suits, yet this Court does not intend to interfere with the order of transfer made, since it will provide procedural convenience to the Court in managing both the E.Ps and the suits. All the issues raised herein by the rival parties are left open for them to agitate before the learned District Judge.

7. The revision petition is disposed of in the manner indicated above.

No costs. Consequently, connected miscellaneous petition is closed.

15.03.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

ds

To:

The Principal District Judge
Coimabatore.



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N.SESHASAYEE.J.,

ds

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