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CRP (PD) No. 946 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No. 946 of 2018

And

C.M.P.Nos. 5081 & 5082 of 2018

1. N.Pazhanisamy

2. P.Narayana Gounder

... Petitioners/Petitioners

Vs

1. Devathal

2. Senthil Kumar

3. R.Raju

4. Ponnammal

5. R.Lakshmi

6. A.Murugesan

7. S.Lakshmi

8. A.Balasubramaniam

9. Ponnammal

10. Bagyammal

11. Muthusamy

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12. Government of Tamilnadu
Represented by District collector Tiruppur,
District Collector Office,
Tiruppur.

13. The Thasildar
Taluk Office
Avinasi.

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 22.12.2017 passed in Tr.O.P.No. 98 of 2017 on the file of the Principal District Judge, Tiruppur.

For Petitioners : Mr. S.Makesh

For RR 12 & 13 : Dr. S.Suriya

ORDER

Notice had been directed to the respondents. Notice had been served on the respondents. Names and addresses of the 1st to 11th respondents are printed in the cause list. There is no appearance on behalf of the said 1st to 11th respondents. Let me however proceed further and dispose the Civil Revision Petition.

2. The Civil Revision Petition has been filed by the 1st and 2nd



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defendants in O.S.No. 111 of 2017 questioning an order dated 22.12.2017 passed by the Principal District Judge, Tiruppur in Tr.O.P.No. 98 of 2017.

3. By filing Tr.O.P.No. 98 of 2017 under Section 24 of CPC, a plea was sought that two separate suits, namely, O.S.No. 111 of 2017 which was pending on the file of the Sub Court at Avinashi, which was a suit for partition and separate possession and O.S.No. 76 of 2017 which was pending on the file of II Additional District Court at Tiruppur, which was a suit for declaration of title should be tried together.

4. O.S.No. 111 of 2017 had been filed by the eight plaintiffs as against four defendants among whom, the first and second defendants, have filed the present revision petition seeking partition and separate possession of a property which had been described in the schedule appended to the said plaint and which is situated at Thathanoor Village in Avinashi Taluk with new S.No. 135/2B measuring 1.83.5 hectare. The 1st and 2nd defendants P.Narayanagounder and N.Palanisamy.

5. The plaintiffs therein had sought that the aforementioned



property should be divided into 15 equal shares and that 10 shares should be allotted to the plaintiffs therein. Among the documents filed along with the plaint, the primary documents were a settlement deed in favour of the second plaintiff dated 14.11.2009 and a patta dated 06.01.2017 in the joint names of the second plaintiff and the second defendant.

6. The second defendant aforementioned N.Palanisamy, had then filed O.S.No. 76 of 2017 before the II Additional District Court at Tiruppur and that particular suit was filed for declaration of title of the aforementioned property in O.S.No. 111 of 2017 and also a larger extent in the very same survey number as being vested with him pursuant to a settlement deed executed in his favour. The said document, namely, settlement deed dated 21.09.2011 had also been produced as a document.

7. Therefore, the plaintiff in O.S.No. 76 of 2017 therein claimed title over the property and the plaintiffs in O.S.No. 111 of 2017 claimed that the said property is divisible in nature and therefore, claimed a share in the said property.

8. Issues which arise are therefore common. The Primary issue is



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whether the property can be partitioned and whether sharers, who seek a right to partition can actually been granted a share in the property or whether the plaintiff in O.S.No. 76 of 2017 should be recognised as having exclusive title over the said property. The evidence which would have to be let in and adduced by the parties would therefore be overlapping and both parties would be relying on settlement deeds and also questioning the settlement deed in favour of the other side. This requires the evidence to be analysed as a whole to come to a decision whether partition can be granted or relief of declaration should be granted.

9. Viewed from any angle, it is only appropriate that both suits are tried together and therefore, I would interfere with the order passed by the learned Principal District Judge at Tiruppur in Tr.O.P.No. 98 of 2017 dated 09.08.2017 and set aside the same.

10. Among the reasons given by the learned Judge to reject the



transfer petition was that the suit in O.S.No. 76 of 2017 had been filed subsequent to O.S.No. 111 of 2017 and therefore, the learned Judge doubted the bona fide of institution of such suit.

11. It is to be noted that one of the basis for the filing of the suit was a registered settlement deed in favour of the plaintiff therein and which document will necessarily have to be examined during the course of trial and any document presented in any suit in a Court, asserting title has to be examined ascertain whether title can be recognised or not.

12. Viewed thus, the order under revision requires to be interfered with. The learned Judge had found that the parties are the same, that the properties are the same and on that ground itself, should have allowed the application seeking transfer and directed joint trial of both the suits.

13. In view of the above reasons, Civil Revision Petition is allowed and the order dated 09.08.2017 in Tr.O.P.No. 98 of 2017 is set aside. O.S.No. 111 of 2017 now pending on the file of the Sub Court at



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Avinashi, is directed to be transferred to the file of the II Additional District Court at Tiruppur to be tried jointly along with O.S.No. 76 of 2017. The plaintiff in O.S.No. 111 of 2017 may lead evidence and the witnesses on their side may be categorised as plaintiff's side witness. The plaintiff in O.S.No. 76 of 2017 may thereafter lead rebuttal evidence and also lead evidence with respect to his claim but however the nomenclature shall be as defence witnesses.

14. The documents filed on behalf of the plaintiffs in O.S.No. 111 of 2017 shall be marked as Ex.A series and the documents in O.S.No, 76 of 2017 filed by the plaintiff therein shall be marked as Ex.B series. It is hoped that the II Additional District Judge, would devote attention to dispose of both the suits in manner known to law as early as possible.

C.V.KARTHIKEYAN, J.

Vsg



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15. In the result, the Civil Revision Petition is allowed.

Consequently, connected Miscellaneous Petitions are closed. No costs.

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vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1.Principal District Court, Tiruppur.

2.The Section Officer,
VR Section,
Madras High Court, Chennai.

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