



CRP(NPD)No.1 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No.1 of 2017

and

CMP No.10 of 2017

V.Karthikeyan

...

Petitioner

Vs.

1.N.Vasantha

2.M.Punithavathi

3.R.Mangayarkarasi

4.S.Hemamalaini

5.M.Vijayalakshmi

6.V.Nagalingam

7.M.Umamaheswari

...

Respondents

Prayer: This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 28.04.2016 made in I.A.No.267/2015 in I.A.No.41 of 2010 in O.S.No.20 of 2001 on the file of the Sub Court, Tiruvarur.

For Petitioner : Mr.J.Jyothi

For Respondents : Mr.K.Harishankar
for Mr.Srinath Sridevan



CRP(NPD)No.1 of 2017

ORDER

WEB COPY

A suit for partition instituted in the year 2001 is still meandering around the courts without obtaining fruits of either the preliminary decree or the final decree, which have been passed.

2.The revision petitioner herein is the second defendant in O.S.No.20 of 2001, which suit is pending on the file of the Principal Subordinate Court, Tiruvarur. The said suit in O.S.No.20 of 2001 had been filed by the 5th respondent herein/M.Vijayalakshmi against two brothers and 5 sisters seeking partition and separate possession of 1/8th share in the suit schedule properties.

3.The suit schedule properties given in the schedule to the suit are Nanja and Punja lands and it is stated that they are agricultural lands. The third defendant in the suit N.Vasanth is the first respondent herein. She did not participate in the trial proceedings, wherein, a preliminary decree for partition was granted. She also did not participate in the final decree proceedings.



CRP(NPD)No.1 of 2017

WEB COPY

4. At that particular stage, she filed an application in I.A.No.267 of 2015, seeking to set aside the exparte order and to include further properties, which, according to her, are also available for partition among the parties. That particular application was resisted by the revision petitioner/second defendant in the suit.

5. The reasons for non appearance before the Court, when the preliminary decree and the final decree were passed, can be appreciated only by the trial Court. The trial Court had taken a decision that the reasons are acceptable and that she can participate in the said proceedings. I will not interfere with that part of the order. The learned counsel for the revision petitioner states that there had been a delay of nearly about 3000 days. But, however a perusal of the affidavit filed in support of I.A.No.267 of 2015 also reveals the fact that she claims that her husband had died and that, she suffered from mental depression.



CRP(NPD)No.1 of 2017

WEB COPY

6.However, one aspect in the order require interference viz., the inclusion of further properties to be subjected for partition.

7.The learned Sub Judge, Tiruvarur, in the course of the order, which is now assailed by the revision petitioner, had spoken about those particular properties. Evidently gathering details from the affidavit filed in support of the petition in I.A.No.267 of 2015, the learned Sub Judge has spoken about Chitta for fasli year 1395 for survey No.75/2012 and Chitta for fasli year 1395 for survey No.75/9/74/1C and another chitta for fasli year 1395 for survey No.75/2, 74/5A, 74/C, 74/15 and it is stated that the documents stand in the name of Vaithiyanathan Pillai, guardian of the first respondent. The learned Sub Judge had also spoken about Adangal with respect to the aforestated lands and thereafter, had held that a perusal of the revenue records viz., the Chitta and Adangal produced by the first respondent herein, established that the said properties are still in the name of Vaithiyanathan Pillai guardian of the first respondent.



CRP(NPD)No.1 of 2017

WEB COPY

8. However, the learned counsel for the revision petitioner herein contends that there had been a partition in the year 1976 between the father and two sons and one of the sons was the revision petitioner herein and the said properties had been allotted to the revision petitioner.

9. When these issues require detailed examination, the learned Sub judge should have permitted the parties to adduce evidence.

10. The first respondent/petitioner in I.A.No.267 of 2015, quite apart from producing Chitta and Adangal records has to affirm the fact that the said properties are actually still available for partition and the revision petitioner/second respondent will also have to lead evidence whether the said properties are still available or not available for partition, in view of the earlier partition deed of the year 1976.

11. This issue can be decided only on the basis of the evidence. The learned Sub Judge should not have come to a conclusion based on the



CRP(NPD)No.1 of 2017

revenue records and that revenue records has established title. The revenue records do not establish the title. Revenue records only indicate the name of the person, who is responsible to pay the taxes, and in so far as the agricultural lands are concerned, who has to pay the kist, tax. The adangal reflects crops actually grown in the land.

12.If there had been partition, sufficient opportunity should have been given to produce documents and marked them as exhibits.

13.Therefore, I would set aside the order dated 28.04.2016 in part with direction to re-examine the issue with respect to the inclusion or otherwise of further the properties as mentioned in I.A.No.267 of 2015. The learned Sub Judge, Tiruvarur, has to invite the petitioner in I.A.No.267 of 2015, the first respondent herein/the third defendant and the contesting respondent in the said application, the petitioner herein/second defendant to produce evidence with respect to inclusion of further properties and then, consider whether the said properties can be included in the suit schedule of properties.



CRP(NPD)No.1 of 2017

WEB COPY

14. With the abovesaid observation, the Revision Petition is partly allowed with respect to permitting the first respondent to be a party and to participate in the suit proceedings, but, the order under challenge in revision is set aside, so far as the inclusion of further properties are concerned. The parties are directed to let in evidence with respect to that particular portion of the order. Consequently, connected miscellaneous petition is closed. No costs.

Index: Yes/No
Internet: Yes/No
sms

28.03.2022

To
The Sub Court, Tiruvarur.



WEB COPY



CRP(NPD)No.1 of 2017

C.V.KARTHIKEYAN,J

sms

CRP (NPD) No.1 of 2017
and
CMP No.10 of 2017

28.03.2022