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CRP(PD)No.2341 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2021
PRONOUNCED ON : 21 .02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.2341 of 2017

Subramaniyan

... Petitioner

Vs.

1.Muthukumaran

2.Santhanakrishnan

... Respondents

Prayer:- This Civil Revision Petition filed under 227 of the Constitution of India, against the fair and decretal order, made in I.A.No.55 of 2017 in O.S.No.118 of 2007, dated 08.06.2017, on the file of the learned District Munsif Cum Judicial Magistrate, Vanur.

For Petitioner : Mr.S.N.Subramani

For Respondents : Mr.K.Kumaraguru
For M/s.Sai Associates for R1



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ORDER

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The Civil Revision Petition has been filed, against the fair and decretal order, dated 08.06.2017, passed in I.A.No.55 of 2017 in O.S.No.118 of 2007, on the file of the learned District Munsif Cum Judicial Magistrate, Vanur.

2. The plaintiffs who are the respondents herein have filed a suit in O.S.No.118 of 2017 for declaration of title to the 1st and 2nd item of the suit property in favour of the plaintiffs and for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiffs and for costs. Pending the suit, the 2nd defendant has filed an interlocutory application in I.A.No.55 of 2007 under Section XVI Rule 1 of CPC, seeking direction for issuance of summons to a proposed witness namely Sadagopan on the ground that the said Sadagopan is one of the parties in the two unregistered Partition Deeds dated 05.06.1988 and 09.09.1996 respectively. After considering the submissions made by both side, the learned trial Judge dismissed the application on 08.06.2017, against which the Civil Revision Petition has been filed by the petitioner / 2nd defendant.

3. This Court heard the learned counsel for the petitioner and the



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respondents and also carefully perused the materials placed on record.

4. The suit in O.S.No.118 of 2007 has been filed by the plaintiffs/ respondents for declaration of title of the suit properties and for permanent injunction. According to the plaintiffs/respondents, the suit property originally belonged to one Thiruvenkadasamy Pillai and after his death, the properties were inherited by his children, five sons and three daughters viz., Lakshminarayanan (1st defendant), Rajagopal, Sadagopan (Proposed witness), Santhanakrishnan (2nd plaintiff), Kalyanarayanan, Saroja, Kanagavalli and Kumudham. It is the contention of the plaintiffs/respondents in the plaint that as an elder member of the family, the 1st defendant managed the family properties and the sons and daughters of Thiruvenkadasamy Pillai divided the family properties on 05.06.1988 under a Partition List and the original partition list was given to the 1st defendant being the elder member of the family. The other members were given Xerox copies of the same. The 1st item of the suit property i.e., 'C' Schedule property was allotted to Sadagopan under the said partition list and in turn, the said Sadagopan settled the same in favour of his daughter Manjula on 20.09.2004 out of love and affection. The said Manjula took possession of



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the property and later she sold the property to the 2nd plaintiff on 31.05.2005 for a valid consideration and subsequently, the 2nd plaintiff is in possession and enjoyment of the 1st item of the suit property. The 2nd item of the suit property i.e., 'D Schedule property' was allotted to the 2nd plaintiff under the partition list dated 05.06.1988, who in turn settled the 2nd item of the suit property to the son of the 1st plaintiff on 20.09.2004 and the 1st plaintiff took possession of the 2nd item of the suit property. The 2nd defendant claims to have purchased the suit property from the 1st defendant who has got no title or possession of the suit property. The 2nd defendant had accepted the settlement deed, dated 20.09.2004 and Manjula is the lawful owner of the suit property. Since the defendants are attempting to interfere with the possession of the plaintiffs by an illegal sale deed, the plaintiffs constrained to file the above suit.

5. The petitioner who is the 2nd defendant in the suit filed Written statement denying the averments made by the respondents/plaintiffs in their plaint and sought for dismissal of the suit. It is also contended that after purchase of the suit property from the 1st defendant, he is in possession and enjoyment of the suit property and sought for dismissal of the suit.



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6. Before the trial Court, the 2nd respondent herein was examined as PW1 and the petitioner was examined as DW1. In that stage, the petitioner herein has filed IA No.55 of 2017 to examine one of the brothers of the 2nd plaintiff and 1st defendant by name Sadagopan. After contest, the application was dismissed by the learned District Munsif cum Judicial Magistrate, Vanur on 08.06.2017, holding that the petitioner has not pleaded any sufficient cause as to why the petitioner has omitted to file a list of witnesses and also held that a vague averment in the petitioner's affidavit that the testimony of the proposed witness will throw light on the truthfulness of the case, is insufficient to hold that such testimony is relevant for the case.

7. According to the petitioner, subsequent to the execution of the Partition list, dated 05.06.1988 (Ex.A1), another unregistered Partition List was executed among the brothers on 09.09.1996 which was marked as Ex.B1 on his side. It is contended on the side of the petitioner that since the 1st defendant from whom the petitioner had purchased the suit property, did not appear before the Court and that the petitioner wanted to summon the



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proposed party Sadagopan who is the brother of 2nd plaintiff and the 1st defendant who is also one of the parties in both the unregistered partition, so that the petitioner can substantiate his case.

8. There is no dispute with regard to Ex.A1, Partition List. It is also not disputed by the petitioner about the Settlement Deed executed by Sadagopan to his daughter Manjula and the Sale Deed Executed by Manjula to the 2nd respondent herein. The petitioner has also not disputed the settlement deed executed by the 2nd respondent in favour of the 1st respondent herein. While so, it is for the respondents to substantiate their case by proving the documents filed on their side. The petitioner has nothing to do with the proposed party, Sadagopan, while the fact remains that the petitioner has purchased 0.60 cents in the suit Survey No from the 1st defendant in the suit. Therefore, as rightly held by the trial Court, the vague averment in the petitioner's affidavit that the testimony of the proposed witness will throw light on the truthfulness of the case is not an acceptable and sufficient reason and the petitioner is not entitled for the relief sought for. This Court does not find any infirmity or irregularity in the order of the trial Court in dismissing the application filed by the petition



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in IA No.55 of 2017 and there is no merits in this revision. Hence, this Civil

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Revision Petition is dismissed. No costs.

21.02.2022

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Index:Yes/No

Speaking Order / Non speaking order

To

1. The District Munsif Cum Judicial Magistrate,
Vanur.
2. The Section Officer,
V.R. Section,
High Court of Madras.

S.KANNAMMAL, J.

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Pre-Delivery Order made in
C.R.P.(PD)No.2341 of 2017

21.02.2022