



CRP.No. 2964 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 2964 of 2017

and

CMP.No.14018 of 2017

V. Soundararajan

.. Petitioner

Versus

1.V.Rajendran

2.Settu

3.Jayanthi

4.Thamizvanan

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in I.A.No.450 of 2016 in O.S.No.9 of 2012 dated 10.07.2017 on the file of Subordinate Judge, Ranipet, Vellore District.

For Petitioner : Mr.K. Mohanamurali

For R1 : Mr.K.V. Ananthakrishnan

For R2 to R4 : No Appearance



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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order, dated 10.07.2017 in I.A.No.450 of 2016 in O.S.No. 9 of 2012 on the file of the learned Subordinate Judge, Ranipet, Vellore District.

2. The revision petitioner herein is the first defendant and the first respondent herein is the plaintiff in the original suit.

3. The first respondent/plaintiff filed the suit in O.S.No.9 of 2012 before the learned Subordinate Judge, Ranipet, Vellore, for partition and separate possession in respect of the suit schedule mentioned property. During the pendency of the suit, the petitioner/1st defendant & others filed I.A.No.450 of 2016 under Order VI Rule 17 of CPC., to include the petition mentioned properties as suit schedule properties in the above suit. After scrutinizing all the relevant records, the Court below dismissed the said application by order dated 10.07.2017 holding that the petitioners have failed to prove that the suit properties are joint family properties



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5. Per contra, learned counsel appearing for the respondents/defendants 1 and 3 to 5 submitted that the first respondent/plaintiff obtained loan from the Indian Bank in the year 1993 and purchased the properties in Item No.4 (I to IV) from one Sampoorammal. He has also obtained another loan from State Bank of India and purchased the power Tiller and Tractor. Item No.I is the Poramboke land, which was in possession and enjoyment of the first respondent/plaintiff. He constructed a house from his own funds and subsequently sold it to the third party. The properties in Sl.No.4, (V to XII) are purchased by his wife's parents in the name of his wife. Therefore, all the properties are the self acquired properties and therefore, it cannot be included in the suit proceedings. Hence, he prays to dismiss the revision petition.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the first respondent/plaintiff herein filed the suit in O.S.No.9 of 2012 before the



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learned Subordinate Judge, Ranipet, Vellore District, for partition and separate possession in respect of the suit schedule mentioned properties.

Pending the suit, the defendants 1 and 3 to 5 have filed I.A.No.450 of 2016 under Order VI Rule 17 of CPC to include the petition mentioned properties as suit schedule properties in the above suit. After perusing the records, the Court below dismissed the application by order dated 10.07.2017 on the ground that the petitioners have failed to prove that the suit properties to be included in the suit, are joint family properties purchased out of the income derived from nucleus of the joint family properties. The contention of the revision petitioner is that the first respondent/plaintiff has filed the suit for partition without bringing all the joint family properties in the suit. The left out properties were purchased by his father in the name of the first respondent/plaintiff and his wife out of the nucleus of the joint family properties and therefore, the said properties have to be included for proper adjudication in the suit. But the contention of the first respondent/plaintiff is that he obtained loan from the Indian Bank in the year 1993 and purchased the properties in Item Nos.4 (I to IV) from one Sampoorammal and he has also obtained



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another loan from State Bank of India and purchased the power Tiller and Tractor. Item No.I, is the Poramboke land, which was in possession and enjoyment of the first respondent/plaintiff. He constructed a house from his own funds and subsequently sold it to the third party. The properties in Sl.No.4 (V to XII) are purchased by his wife's parents in the name of his wife. Hence, all the properties are the self acquired properties and therefore, it cannot be included in the suit proceedings.

8. Further, the Court below has failed to take note of the fact that the 1st defendant in the written statement categorically contended that his elder brother, the plaintiff herein, has partially filed the suit to suit his convenience and all the properties of deceased Velu, were not included in the plaint. The Court below erroneously considered the facts without any oral and contra evidence to be let in by the defendants and dismissed the petition holding that the said property was put on lien and not to be included. The contention of the revision petitioner is that Ex.R1 to R5 are taken in evidence without any substantial oral evidence and hence the order is liable to be set aside. On the other hand, it is clear case of the



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petitioner that the said property was purchased from the source of income from the ancestral property. Hence, the Court below mechanically dismissed the petition by non-application of mind. Therefore, the Court below has failed to take note of the fact that when the clear stand was taken in the written statement and leave was also sought for taking steps to include the properties left by the plaintiff, the dismissal of the petition is causing great hardship to the defendants. Therefore, it is necessary to include the petition mentioned properties in the plaint schedule properties in the suit proceedings. If the properties are not included, the above suit is also hit partial partition and also by non-joinder of necessary parties in the suit and hence, the same is liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed. The impugned order in I.A.No.450 of 2016 in O.S.No.9 of 2012 dated 10.07.2017 passed by the learned Subordinate Judge, Ranipet, Vellore District, is hereby set aside. The Court below is directed to take necessary steps to amend the plaint, thereby, the Court below is further directed to proceed with the case and dispose of the suit within a period



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of 8 months from the date of receipt of a copy of this order. The learned counsel for the first respondent/plaintiff shall amend the schedule mentioned properties by mentioning the nature of the properties according to him. No costs. Consequently, connected Miscellaneous Petition is closed.

17.10.2022

msm

To

1. The Subordinate Judge, Ranipet, Vellore District.
2. The Section Officer, V.R.Section

High Court, Madras.

T.V.THAMILSELVI, J.



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