



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Thursday, the Eleventh day of August Two Thousand and Twenty Two

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PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR
and
The Hon`ble Mrs.Justice S.SRIMATHY

C.M.P. (MD) No.6483 of 2022
in
A.S. (MD) No.122 of 2020 and 247 of 2021

C.M.P. (MD) No. 6483 of 2022

B.S.Gurusamy, ... Petitioner/3rd Respondent

Vs

1 B.S.Narayanan ...1st Respondent/Appellant

2 B.S.Anandan

3 B.S.Velayutham,

4 B.S.Arunagiri,

5 B.A. Bala Vadivel Murugan,

6 A.S. Barakath Fathima,

7 A.K. Anwar Basha,

8 S. Mumtaj Begum,

9 M. Abdul Rehman,

10 The Special Tahsildar (Land Acquisitions),
National Highways Office,
Kulathur, having office at No.12,
Devaki Complex, Pudukottai,
Trichy Main Road,
Keeranur,
Pudukkottai District.

... Respondents 2 TO 10
/Respondents 2 , 4 TO 10

**AS (MD) No.122 OF 2020:**

B.S.Narayanan

...Appellant/Plaintiff

-vs-

1. B.S.Anandan
2. B.S.Velayutham,
3. B.S.Gurusamy,
4. B.S.Arunagiri,
5. B.A. Bala Vadivel Murugan,
6. A.S. Barakath Fathima,
7. A.K. Anwar Basha,
8. S. Mumtaj Begum,
9. M. Abdul Rehman,
- 10.The Special Tahsildar (Land Acquisitions),
National Highways Office, Kulathur,
Having Office at No.12, Devaki Complex,
Pudukottai, Trichy Main Road, Keeranur,
Pudukkottai District.

...Respondents 1 to 10
/ Defendants 1 to 10**AS (MD) No.247 of 2021:**

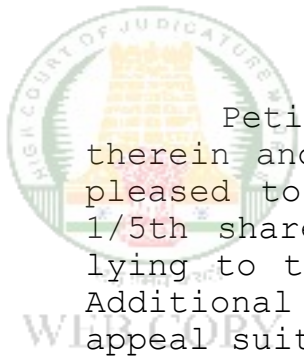
B.S.Arunagiri

...Appellant/4th Defendant

-vs-

1. B.S.Narayanan
2. B.S.Anandan,
3. B.S.Velayutham,,
4. B.S.Gurusamy,
5. B.A.Bala Vadivel Murugan,
6. A.S.Barakath Fathima,
7. A.K.Anwar Basha,
8. S.Mumtaj Begum,
9. M.Abdul Rehman,
- 10.The Special Thasildar(Land Acquisition),
National Highways Office,Kulathur,
Having office at No.12,
Devaki Complex, Pudukottai,Trichy Main Road,
Keeranur, Pudukottai District.

...1st Respondent/Plaintiff...Respondents 2 to 4
/ Defendants 1 to 3...Respondents 5 to 10
/ Defendants 5 to 10



Petition filed praying that in the circumstance therein and in the affidavit filed therewith the High Court may be pleased to permit the petitioner / 3rd respondent to withdraw his 1/5th share in the entire amount deposited by the 10th respondent lying to the credit of O.S.No.116 of 2013, on the file of the III Additional District Court, Trichy, pending disposal of the above appeal suit.

Prayer in AS(MD) . 122/ 2020 :

To set aside the Decree and Judgment dated 28.02.2020 made in O.S.No.116 of 2013 on the file of the III Additional District Judge, Tiruchirappalli and Decree the suit in toto.

Prayer in AS(MD) . 247/ 2021 :

To call for the records and set aside the judgment and decree dated 28.02.2020 in O.S.No.116 of 2013 on the file of the III Additional District Judge, Tiruchirappalli and allow this appeal with costs throughout.

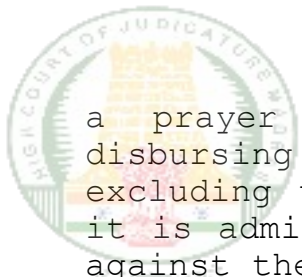
ORDER : These petitions coming up for orders on this day, upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.K.RAJESHWARAN, Advocate for the petitioner in CMP(MD)No.6483 OF 2022 and of MR.K.PRABHAKAR, Advocate for the 1st Respondent in CMP(MD)No. 6483 OF 2022 AND for the appellant in AS(MD)No.122 OF 2020 and MR.I.ABRARMD ABDULLAH, Advocate for Respondents 2 & 5 in CMP(MD)No.6483 OF 2022 and MR.H.LAKSHMI SHANKAR, Advocate for the 4th Respondent and for the appellant in AS(MD)No.247 of 2021 and MR.K.RAGATHEESH KUMAR, Advocate for M/S. ISAAC CHAMBERS for the Respondents 6 & 9 in CMP (MD)No.6483 OF 2022 and of MR.L.GEORGE PAUL ANTO for the 3rd Respondent in CMP(MD)No.6483 OF 2022 and of MR.J.ASHOK, Additional Government Pleader for the 10th Respondent in all cases, the court made the following order:-

(The order of the Court was made by **S.S.SUNDAR, J.**)

This petition is filed by the third respondent in the appeal, who is the third defendant in the suit, to withdraw 1/5th share in the entire amount deposited by the 10th respondent lying to the credit of O.S.No.116 of 2013 on the file of the III Additional District Court, Trichy.

Brief facts that are necessary for the disposal of this petition are as follows:-

2.The appellant, as plaintiff, filed the suit for partition to divide the suit properties into five equal shares and to allot one such share to the plaintiff. It is admitted that during the pendency of the suit, one of the suit properties was acquired by the 10th defendant. Therefore, the plaint was also amended later to seek



a prayer for injunction restraining the 10th defendant from disbursing the compensation amount to the defendants 1 to 4 excluding the plaintiff in respect of the land acquired. However, it is admitted that the said suit was dismissed on 28.02.2020. As against the same, the above appeal is filed by the plaintiff.

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3.The petitioner in this petition has not even filed an appeal challenging the judgment and decree of the Trial Court refusing to grant a decree for partition. From the admitted facts, it is seen that the claim of the plaintiff and the petitioner herein that the suit properties are available for partition has been specifically rejected by the Trial Court. The consequential prayer for injunction restraining the 10th defendant from disbursing the compensation amount to the defendants 1 to 4 was also rejected. In such circumstances, the present petition filed by the petitioner to withdraw 1/5th share in the entire amount deposited by the 10th respondent is not sustainable.

4.The petitioner has filed this petition consciously knowing the fact that suit had already been dismissed and his claim will be legitimate, only if there is a declaration of Civil Court as to the character of the property as well as the petitioner's share by way of a preliminary decree. The application has been filed to defeat the legitimate rights of contesting defendants. Without an adjudication of petitioner's entitlement to get a share in the property, which was acquired by the 10th respondent earlier, this Court is of the view that this petition is not only vexatious but also filed with an oblique motive to withdraw the amount to defeat the rights of contesting defendant who has succeeded in his plea that there had been a partition earlier and that the suit for partition is not maintainable.

5.This Court is fully convinced that the prayer is unsustainable especially when the petitioner has not challenged the judgment and decree of Trial Court. The relief sought for is with a fraudulent intention and motivation. Therefore, this petition is dismissed with a cost of Rs.10,000/-. The petitioner shall pay the said cost to the Legal Services Authority attached to this Bench within a period of two weeks from the date of receipt of a copy of this order.

6.Post the main appeals for final hearing on 02.09.2022.

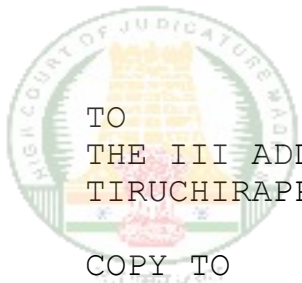
sd/-

11/08/2022

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO
THE III ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI.

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THE OFFICER INCHARGE,
LEGAL SERVICES AUTHORITY,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.L.GEORGE PAUL ANTO, Advocate (SR-8478[I])

ORDER

IN

C.M.P. (MD) No.6483 of 2022
in

A.S. (MD) No.122 of 2020
and 247 of 2021

Date :11/08/2022

cmr

PKP/SVR/SAR-3/17.08.2022/5P/4C