



CRP.Nos.335 & 336 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 13.02.2023

Delivered On: 24.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.Nos.335 & 336 of 2023

and

C.M.P.No.2842 of 2023

N.Narayana Reddy

... Petitioner/Respondent/Plaintiff
in both Petitions

Vs.

C.Suresh Babu

... Respondent/Petitioner/Defendant
in both Petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal Order dated 21.12.2022 passed in I.A.Nos.9 & 8 of 2022 in O.S.No.174 of 2015 on the file of the learned District Munsif cum Judicial Magistrate at Denkanikottai by allowing the present Civil Revision Petition.

For Petitioner
in both Petitions : Mr.R.Jayaprakash

For Respondent
in both Petitions : Mr.A.Ashwin Kumar



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COMMON ORDER

These Petitions have been filed against the Fair and Decretal Order dated 21.12.2022 passed in I.A.Nos.9 & 8 of 2022 in O.S.No.174 of 2015 on the file of the learned District Munsif cum Judicial Magistrate at Denkanikottai.

2. Mr.R.Jayaprakash, learned Counsel for the Petitioner submitted that the Suit was filed for partition in the year 1960 and subsequently, Appeal was filed. In the Appeal, it was remanded back to the trial Court for fresh Judgment. The Suit was decreed by granting preliminary decree. The Appeals filed before the District Court, Krishnagiri in A.S.No.159/1987, 159/1988, 160/1988, 22/1989 and 55/1989. These Appeals were disposed of by a common Judgment by the learned Principal District Judge, Krishnagiri, as per Order dated 25.11.2010. Aggrieved by the Judgment of the learned Principal District Judge, Krishnagiri, the aggrieved parties preferred Second Appeals in S.A.Nos.186/2012, 738/2012, 215/2013 and these Second Appeals are pending before this Court. Pending Second Appeals, the learned Single



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Judge of this Court had passed Order whereby the Advocate Commissioner was appointed with a direction to visit the Suit Properties and find out the extent of the properties and also to file a report before the Mediation Centre attached to the Principal District Court, Krishnagiri. So that there is a likelihood of the parties to settle the dispute amicably. It is the further submission of the learned Counsel for the Revision Petitioner that in due course of the pendency of Appeal before the Principal District Court, Krishnagiri, the third party had purchased undivided share from one of the co-sharer of the dispute in the partition Suit. With that sale deed, he had attempted to interfere with the peaceful possession and enjoyment of the properties of the Revision Petitioner. Therefore, pending Second Appeal, the Revision Petitioner herein had filed O.S.No.174/2015 before the Court of the learned District Munsif, Denkanikottai, Krishnagiri District seeking bare injunction restraining the Defendant/third Party from interfering with the peaceful possession and enjoyment of the Suit properties of the Revision Petitioner/Plaintiff in O.S.No.174/2015. The learned Counsel for the Petitioner submitted that the Revision Petitioner as Plaintiff is entitled to a Suit for injunction restraining the third Party from interfering with the



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peaceful possession and enjoyment of the Plaintiff in the Suit Properties.

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He had invited the attention of this Court to the contents of the Complaint, where the copy of the Complaint is enclosed with the typed set along with the Petition. In the Complaint, he had clearly stated about the partition Suit filed by his ancestors in the year 1960, culminating in the continuous Court proceedings. Now, Second Appeals in S.A.Nos.780, 730/2012 and 215/2013 are pending before this Court.

2.1. Further, the learned Counsel for the Revision Petitioner submitted that it is a settled proposition of law that the third party who purchased the undivided share from the joint family property cannot seek injunction. He/she can only seek for relief of partition and he/she had to wait for the delivery of possession after the division of the property by metes and bounds. It is the contention of the learned Counsel for the Revision Petitioner that the third party herein who is the Defendant in O.S.No.174/2015 was not at all a party to any of the proceedings culminating in the Second Appeal that is now pending before this Court. When the trial in the Suit commenced, the Defendant in O.S.No.174/2015 had filed I.A.No.09/2022 to recall P.W-1 for further



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examination under Order XVII Rule 17 of Civil Procedure Code. He had sought to recall Plaintiff as P.W-1 to mark certified copy of the Advocate Commissioner's Report filed by the Advocate Commissioner in the Second Appeal. The Plaintiff in O.S.No.174/2015 has to file objections to the Advocate Commissioner's Report and that is not final. Only after hearing objections, all the parties to the proceedings in the Second Appeal, the learned Single Judge of this Court has to pass Orders either accepting the Advocate Commissioner's report or issuing direction to the Advocate Commissioner to re-visit and file details as objected by parties to the proceedings in the Second Appeal. When that be the case, the Plaintiff in O.S.No.174/2015 as Respondent in I.A.No.9/2022 had objected to the Petition in I.A.No.09/2022 seeking recall of P.W-1 to mark certain documents which are not final and which cannot be relied upon in the Suit in O.S.No.174/2015. The attempt of the Defendant in O.S.No.174/2022 is to mark Advocate Commissioner's Report regarding possession. The learned Counsel for the Revision Petitioner submits that it is also a settled proposition of law that possession is to be proved through oral evidence and not through Advocate Commissioner's report. Therefore, ignoring the objection of the learned Counsel for the Revision



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Petitioner/Plaintiff in I.A.No.09/2022, the learned District Munsif cum Judicial Magistrate, Denkanikottai had allowed the I.A.No.09/2022 in O.S.No.174/2015 as per Order dated 21.12.2022. Therefore, the order passed in I.A.No.9 of 2022 in O.S.No.174 of 2015, dated 21.12.2022 is to be set aside as perverse.

2.2. The learned Counsel for the Revision Petitioner also submitted that I.A.No.9/2022 is for recall of P.W-1 under Order XVIII Rule 17 of Civil Procedure Code and I.A.No.8/2022 is for marking of additional document under Order VIII Rule 1 of Civil Procedure Code. The observation of the learned District Munsif cum Judicial Magistrate, Denkanikottai is that no prejudice will be caused to the Respondent/Plaintiff and allowing this Petition is perverse. The learned Counsel for the Revision Petitioner seeks to set aside the Order by allowing I.A.Nos.8 and 9/2022 in O.S.No.174/2015 by Order dated 21.12.2022.

2.3. In support of his contention, the learned Counsel for the Revision Petitioner had relied on the ruling of the Hon'ble Supreme



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Court reported in **(2009) 11 SCC 308 [Peethani Suryanarayana and another Vs. Repaka Venkata Ramana Kishore and others]** wherein it has been held as follows:

“C. Property Law – Co-owner – Joint ownership – Sale of undivided share in land – Rights of purchaser – Held, not entitled to possession – Purchaser acquires right merely to sue for partition – Hindu Law – Joint Family.”

3. The learned Counsel for the Respondent vehemently objected to the submission of the learned Counsel for the Revision Petitioner stating that the Suit was filed on 12.08.2015 by the Revision Petitioner herein as Plaintiff. Written statement filed on 30.03.2016. Issues framed by the learned District Munsif cum Judicial Magistrate on 07.04.2018. At the initial stage, injunction was granted against which the Defendant had preferred in CRP.No.2752/2019 against the Order in CMA.No.10/2017 by the learned Sub Judge, Hosur dated 19.07.2019 reversing the Order in IA.No.460/2015 in O.S.No.174/2015 dated 11.08.2016 and CRP.No.2485/2019 under Article 227 of Constitution of India seeking to strike off the Plaint in O.S.No.174/2015 on the file of the learned Principal District Munsif, Denkanikottai. By common Order in both



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CRPs were disposed of. CRP.No.2752/2019 was disposed with the direction to dispose of the Suit in O.S.No.174 of 2015, on merits in accordance with law, after giving opportunity to both the parties within a period of three months from the date of receipt of a copy of this Order. In CRP.No.2485/2019 seeking to strike off the Complaint was dismissed.

3.1. It is the further contention of the learned Counsel for the Respondent that in spite of direction from this Court, the Plaintiff had not co-operated with the trial Court and he had been protracting the proceedings.

3.2. In support of his contention, the learned Counsel for the Respondent had relied on the ruling of the Hon'ble Supreme Court reported in ***(2020) 10 SCC 706 [Sugandhi (Dead) by Legal Representatives and another Vs. P.Rajkumar represented by His Power Agent Imam Oli]*** wherein it has been held as follows:

“8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the Court along with the written statement, with the leave of the Court. The discretion conferred upon the Court



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to grant such leave is to be exercised judiciously. While there is no straitjacket formula, this leave can be granted by the Court on a good cause being shown by the Defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the Court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the Court should take a lenient view when an application is made for production of the documents under Sub-rule (3).

10. Coming to the present case, the Defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the Suit. We are of the view that the Courts below ought to have granted leave to produce these documents.”



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4. The Suit is for bare injunction, the Advocate Commissioner appointed in Second Appeal cannot have a bearing on the Suit for bare injunction.

5. As per the settled proposition of law, a purchaser of a joint family property in the undivided share cannot claim exclusive right. Considering the fact that the Respondent in Civil Revision Petition/ Defendant in O.S.No.174/2015 is a purchaser, he cannot claim any right till the vendor of his property get the benefit of the partition decree, by delivery of possession, after conclusion of the Second Appeal. He is a purchaser *pendente lite*. Therefore, he has to face the consequences. The limited prayer of the Plaintiff in O.S.No.174/2015 is to restrain the Defendant from interfering with the peaceful possession of the Plaintiff in the joint family property. The vendor of the Defendant is a party to the second Appeal. Therefore, what is in enjoyment of the vendor is to be in possession of the vendor alone till the property is handed over in possession by metes and bounds. Apart from the above, the Suit is for bare injunction and the learned District Munsif cum Judicial Magistrate, Denkanikottai on appraisal of the evidence can pronounce Judgment as



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per law.

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In the light of the above discussion, this ***Civil Revision Petitions*** ***are allowed.*** The Order passed by the learned District Munsif cum Judicial Magistrate at Denkanikottai in I.A.Nos.9 & 8 of 2022 in O.S.No.174 of 2015 dated 21.12.2022 is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

24.03.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The District Munsif cum
Judicial Magistrate,
Denkanikottai.

2. Section Officer,
V.R.Section,
High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.



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Order made in
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