



C.R.P.No. 2942 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No. 2942 of 2019
and
C.M.P. No. 19012 of 2019

Selvaraj Petitioner

Vs

1. G.Nagarajan
2. Gowridharan
3. Lakshmikala
4. Govindarajilu
5. Nagendiren
6. Vasantha
7. Rukmani Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, to strike down the plaint in O.S.No.42 of 2018 on the file of the III Additional District Judge, Vellore District at Tirupattur, by allowing the Civil Revision Petition.

For Petitioner : M/s.Elizabeth Ravi
For R1 to R5 : Mr.Prakash Adiapadam
For R6 & R7 : No appearance



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ORDER

This Civil Revision Petition has been filed to strike down the plaint in O.S.No.42 of 2018 on the file of the III Additional District Judge, Vellore District at Tirupattur, by allowing the Civil Revision Petition.

2. The petitioner is the fourth defendant in the suit filed by the respondents 1 to 5 herein for partition. The relationship between the parties is that the petitioner's father is Pappi Naidu, who died in the year 1980 and his mother is Venkatammal, who died on 15.04.2016. They had three daughters viz., Sulochana, Vasantha and Rukmani. The petitioner's sister Sulochana, though she got married in the year 1972 itself, claiming to be entitled to a share in the suit property belonged to the petitioner and as such, she started the litigation and she instituted a suit in O.S.No.356 of 2004 on the file of the District Munsif Court, Tirupattur for partition and separate possession in respect of the suit schedule property. In the said suit, she impleaded their mother Venkatammal, as the first defendant, and the sisters, respondents 6 & 7 herein as defendants 2 & 3 and the petitioner herein as the 4th respondent and the 5th respondent by name Chandran, who is the third party. The



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suit was contested by the petitioner and the other defendants remained ex-parte in accordance with the petitioner's sister viz., Sulochana came to be dismissed on merits, by a Judgment and Decree dated 17.04.2009. Aggrieved by the same, the said Sulochana preferred an appeal suit in A.S.No.21 of 2009 on the file of the Subordinate Judge, Tirupattur.

3. Pending appeal suit, the said Sulochana died on 16.01.2016 and the respondents 1 to 5 herein were brought on record as her legal representatives. In the appeal, some more respondents were impleaded and after contesting the said appeal suit for some period of time, they had withdrawn the appeal suit and the same was dismissed by a Judgment and Decree dated 28.11.2018. The said appeal suit was withdrawn for the reason that among the respondents herein filed collusive suit for partition in respect of the suit property in O.S.No.80 of 2018 and thereafter, it was referred before the Lok Adalat. Before Lok Adalat, they themselves compromised the issues and the award was passed by the Lok Adalat on 14.07.2018.

4. While being so, now again the respondents 1 to 5 herein filed the present suit in O.S.No.42 of 2018 on the file of the III Additional



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District Court, Vellore at Tirupattur, for partition and separate possession of their share over the same suit schedule property, which also formed the subject matter of the earlier suit in O.S.No.356 of 2004 on the file of the District Munsif, Tirupattur. Since the appeal suit was dismissed as withdrawn by a Judgment and Decree passed in the first suit filed for partition in O.S.No.356 of 2004, it became final. After dismissal of the partition suit, the respondents 1 to 5 herein obtained two settlement deeds dated 28.04.2009 and 31.02.2009, as if the said Sulochana was entitled to those properties, executed the same in all the three suits. The properties subjected for the present suit for partition are one and the same.

5. A perusal of the written statement filed in O.S.No.356 of 2004 reveals that admittedly, except item No.6 to 8 and 10 and the other properties are ancestral property of the petitioner herein. Therefore, leaving those properties, other properties were already subjected to partition in O.S.No.356 of 2003 and the same was dismissed by a Judgement and Decree dated 17.04.2009. It is also seen that the properties scheduled in O.S.No.42 of 2018 on the file of the III Additional District Court, Vellore, is concerned, the Item Nos. 1 to 9 described



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therein, are the Item Nos.1,2,4,9,18 and 20 in the first suit in O.S.No.356 of 2004 and all the properties were subjected for partition in the present suit. Therefore, the respondents 1 to 5 herein have, fraudulently, suppressed the earlier suit in O.S.No.356 of 2004, which was contested on merits and ultimately became final by withdrawal of the appeal suit in A.S.No.21 of 2009 on the file of the Subordinate Judge, Tirupattur by a Judgment and Decree dated 28.11.2018. Therefore, the present suit is nothing but a clear abuse of process of law and it has to be nibbed in the bud itself. When there is clear abuse of process of law, this Court can very well exercise the power under Order 7 Rule 1 and Section 26 of CPC.

6. In view of the above, the plaint in O.S.No.42 of 2018 on the file of the III Additional District Judge, Vellore District at Tirupattur, is struck down. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

22.02.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation: Yes/No
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G.K.ILANTHIRAIYAN.J,

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To
The III Additional District Judge,
Vellore District at Tirupattur

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and
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