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C.R.P(PD)(MD).No.44 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.06.2023

Pronounced on : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.44 of 2019

and

C.M.P(MD)No.230 of 2019

Devaki

... Revision Petitioner/Plaintiff

Vs.

1.Chandrasekaran
represented by his power agent
Sathya Moorthy.

...1st Respondent/7th Defendant

2.O.M.S.Natarajan
3.O.M.S.Ganesan
4.O.M.S.Sabasivam
5.Saroja
6.Nagarethinam
7.Madhavi @ Madhavalakshmi

... Respondents 2 to 7/
Defendants 1 to 6

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 05.09.2018 passed in I.A.No.75 of 2015 in O.S.No.38 of 2013 on the file of the III Additional District Court, Pattukottai.

For Petitioner : Mr.J.Bharathan

For R1 : Mr.A.R.Kannapan



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ORDER

This Civil Revision Petition is filed against the fair order and decretal order dated 05.09.2018 passed in I.A.No.75 of 2015 in O.S.No.38 of 2013 on the file of the III Additional District Court, Pattukottai.

2. The brief facts of the case:

The revision petitioner is the 1st respondent in I.A.No.75 of 2015 in O.S.No.38 of 2013 on the file of the III Additional District Court, Pattukottai. The 1st respondent as plaintiff filed the main suit in O.S.No.38 of 2013 on the file of the III Additional District Court, Pattukottai for partition of his 1/7th share in the suit properties therein against the respondents 2 to 7. The first revision respondent was impleaded in the main suit at his instance as 7th defendant. After impleadment, the first revision respondent/7th defendant filed the petition in I.A.No.75 of 2015 in O.S.No. 38 of 2013 to add some properties in the main suit. The petition was resisted by the plaintiff and other defendants therein. After hearing both, the Trial Court has allowed the petition on 05.09.2018. Aggrieved by the order of the Trial Court, the revision petitioner/plaintiff moved this Court by way of this Civil Revision Petition.

3. Heard both sides and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the revision petitioner has submitted that the properties originally belonged to O.M.Subramania Velalar and Deivanaiammal. The revision petitioner and the revision respondents 2 to 7 are their children. As dispute arose, the revision petitioner has filed the main suit seeking for partition of his 1/7th share in the suit properties. During pendency of the suit, the 1st revision respondent has filed the petition in I.A.No.22 of 2015 to implead him as 7th defendant in the suit by averring that he purchased two item of suit properties. At the time of impleading petition, the revision first respondent/7th defendant has not sought inclusion of the petition mentioned properties in the main suit. As an after thought to drag on the proceedings, the revision first respondent/7th defendant filed the petition in I.A.No.75 of 2015 in O.S.No. 38 of 2013 to include the properties and the same was allowed by the Trial Court on 01.09.2015. Aggrieved by the order, the revision petitioner/plaintiff filed C.R.P.(MD)No.2749 of 2015 before this Court, which was allowed on 14.02.2018. Then, the order of this Court passed on 14.02.2018 was reviewed in Review Application (MD) No.39 of 2018 as both counsel then admitted that the petition I.A.No.75 of 2015 to be remanded back to Trial Court for consideration afresh. After remand, the Trial Court has erroneously passed the impugned order without considering the fact that the petition mentioned properties wanted to be included are



separate properties and the same need not be included. The first revision respondent/7th defendant introduced new pleadings which can be decided by separate suit and not in the suit filed by the revision petitioner. Hence, the order of the Trial Court has to be set aside and this Civil Revision Petition may be allowed.

5. Per contra, the learned counsel for the contesting first revision respondent/7th defendant submits that the main suit is collusively filed by the plaintiff and the defendants 1 to 6. The plaintiff and the defendants 1 to 6 admitted that the suit properties belonged to O.M.Subramanian and Deivanai Ammal. The first revision respondent claimed purchase of some undivided properties from third defendant a branch of O.M.Subramanian, which is not objected by the plaintiff. So, the plaintiff has not filed any revision against the order in I.A.No.22 of 2015 while impleading the first revision respondent as 7th defendant in the main suit. The first revision respondent has also right over the petition mentioned properties and suit properties belonged to O.M.Subramanian. Therefore, in order to avoid multiplicity of proceedings, his right can be adjudicated in this main suit itself which relates to properties originally belonged to O.M.Subramanian. The Trial Court has correctly allowed the petition and therefore, this Civil Revision Petition may be dismissed. In support of his argument, the learned



counsel for the first revision respondent/7th defendant relied on the judgment of this Court reported in **(2021) 4 MLJ 170 in the case of Missiriya and Others /vs/ Sayeeda beevi and Others.**

6. On hearing both and on perusal of order of the Trial Court, it is clear that there is no dispute that the suit properties originally belonged to O.M.Subramanian and Deivanaiammal and that the impugned petition mentioned properties belonged to O.M.Subramanian. The first revision respondent/7th defendant claims that he purchased some properties and undivided properties from third defendant, who is admittedly son of O.M.Subramanian and on that score he was impleaded as party in the main suit. The revision petitioner specifically contends that the 7th defendant has not sought inclusion of the petition mentioned properties while filing I.A.No.22 of 2015 in O.S.No.38 of 2013 to implead him as 7th defendant as it was separate properties. The contention is not acceptable. Because, he came to be impleaded as he claimed right over some properties originally belonged to O.M.Subramanian. After his impleadment, he came to know the non-inclusion of his purchased properties from the third defendant originally belonged to O.M.Subramanian and filed the present petition in order to adjudicate his right over the purchased properties. There is no dispute about the proceedings in I.A.No.75 of 2015 and CRP(MD)No.2749



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of 2015 and Review Application(MD)No.39 of 2018. After remand, the present petition afresh by the Trial Court and has correctly observed that the properties belonged to the family of O.M.Subramanian or not, could be decided only after adducing evidence and since the suit is for partition all the properties belonged to the family have to be included for adjudication and upon such inclusion there would not be caused any prejudice to the plaintiff. This Court has also rendered a decision based on the Apex Court judgment in **2009(12) Scale 259** that for proper adjudication the inclusion of the property sold out is necessary for the suit as rightly argued by the learned counsel for the first revision respondent. Therefore, in the above facts and circumstances the impugned order of the Trial Court is correct and the same need not be interfered by way of this Civil Revision Petition. Thus, the Civil Revision Petition fails.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

23.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The III Additional District Court,
Pattukottai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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and
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