



C.R.P.(MD).No.198 of 2015 (PD)

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).(PD).No.198 of 2015

and

MP(MD).No.1 of 2015

Elangovan

... Petitioner

-VS-

1.V.D.Selvaraj (died)

2.Ramadoss

3.S.Chandra

4.Maheswaran

.....Respondent

(Respondents 3 and 4 are brought on record as
legal heirs of the deceased 1st respondent
vide Court order dated 14.06.2023)

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed on 27.10.2014 by the Principal Subordinate Judge, Thanjavur in I.A.No.299 of 2014 in O.S.No.176 of 2011.

For Petitioner : Mr.G.Karnan

For R2 : No appearance

For R3 & R4 : Mr.M.P.Senthil



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ORDER

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The present revision petition has been filed by the first defendant in a suit for partition.

2. According to the plaintiff, the suit schedule properties originally belonged to one Rethinasamy Udayar who has passed away leaving behind his sons namely the plaintiff, second defendant and four daughters. The properties remained undivided and hence, the present suit has been filed for partition. In the plaint, the plaintiff averred that the second defendant who is his brother had alienated a portion of the property to the first defendant under a registered sale deed dated 21.09.2010.

3. The first defendant had filed a written statement contending that there was an oral partition between the legal heirs of the Rethinasamy Udayar and he had purchased 10 cents of land from the second defendant under a registered sale deed dated 21.09.2010. In view of the previous oral partition, the suit for partition has to be dismissed.



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4. Pending suit, the first defendant had filed I.A.No.299 of 2014 seeking permission of the Court to file an additional written statement to the effect that though sale deed dated 21.09.2010 has been referred to in the written statement, the entire extent covered under the sale deed has not been properly mentioned. Therefore, he sought to file an additional written statement to incorporate the entire extent that is covered under the sale deed dated 21.09.2010.

5. This application for filing additional written statement was objected to by the plaintiff on the ground that it has been filed belatedly that is, after the plaintiff's side evidence was closed and the suit was posted for evidence on the defendants' side.

6. The learned trial Judge had dismissed the application accepting the contention of the plaintiff that the application to receive additional written statement has been filed much belatedly. Challenging the same, the present Civil Revision Petition is filed.

7. According to the learned counsel for the revision petitioner, the sale deed under which he had purchased the property namely the sale deed dated 21.09.2010 has been referred to by the plaintiff in paragraph No.4 of the plaint. As per the said sale deed, he had purchased 10 cents of



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land which is equivalent to 4352 sq.ft. However, in the written statement, only an extent of 1136 sq.ft. has been mentioned. It is only due to the inadvertent mistake and hence, filing of an additional written statement covering the entire extent of land would not be prejudicial to the interest of the other side.

8.Per contra, the learned counsel for the respondents would contend that in the written statement, the defendant had admitted that he had purchased only an extent of 1136 sq.ft, but by way of additional written statement, he is trying to enlarge the property to an extent of 4352 sq.ft. which is nothing but taking an inconsistent stand. He had further contended that after evidence on the side of the plaintiff, the present application has been filed in order to drag on the proceedings.

9.I have considered the submissions made on either side and perused the materials available on record.

10.Both the plaintiff and the first defendant admit that the first defendant had purchased some portion of the properties from the second defendant on 21.09.2010. A perusal of the sale deed indicates that the first defendant had purchased an extent of 4352 sq.ft. which is equivalent to an extent of 10 cents. In the original written statement, the defendants had



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filed a sketch in which the entire 10 cents is indicated. Only in the body of the written statement it has been mentioned as 1136 sq.ft instead of 4352 sq.ft. Therefore, it is clear that the defendant is not attempting to introduce any new case at a belated stage. The plaintiff will not be prejudiced in any manner by receipt of this additional written statement, in view of the fact that the defendant had only attempted to clarify what is already stated in the original written statement. Therefore, the order of the trial Court is set aside and I.A.No.299 of 2014 stands allowed. Considering the fact that the suit is of the year 2011, the trial Court is directed to dispose of the suit on or before 31.12.2023. The parties are directed to co-operate for the speedy disposal.

11. With the above said observations, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.08.2023.

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

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To

1. The Principal Subordinate Judge,
Thanjavur
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

order made in
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