



CRP (MD) No.1157 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.07.2023
Pronounced on	17.11.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.1157 of 2018

and

CMP (MD).No.4960 of 2018

K.Raj

... Petitioner/Plaintiff

Vs.

K.Selvam

... Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order passed in C.M.A.No.47 of 2022 dated 10.11.2017 on the file of the learned III Additional District Munsif Judge, Tirunelveli confirming the fair and decreel order passed in I.A.No.405 of 2016 in O.S.No.177 of 2016 dated 26.10.2016 on the file of the learned Principal Subordinate Judge, Tirunelveli.

For Petitioner : Mr.K.Esakki

For Respondent : Mr.H.Arumugam



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ORDER

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This revision petition has been preferred as against the order passed in C.M.A.No.47 of 2016 dated 10.11.2017 on the file of the III Additional District Court, Tirunelvi confirming the fair and decreetal order dated 26.10.2016 passed in I.A.No.405 of 2016 in O.S.No.177 of 2016 on the file of the learned Principal Subordinate Judge, Tirunelveli.

2.The petitioner / plaintiff has filed the suit in O.S.No.177 of 2016 for partition. The petitioner also filed an application in I.A.No.405 of 2016 for temporary injunction. The Trial Court dismissed the said application against which an appeal was preferred by the petitioner in C.M.A.No.47 of 2016 before the learned III Additional District Court, Tirunelveli. By an order dated 10.11.2017 the learned III Additional District Judge, dismissed the appeal by confirming the order of the trial Court. Aggrieved by this, the present revision is preferred.

3.The learned Counsel appearing for the revision petitioner would submit that the suit property originally belonged to the Government and the same was assigned to one Perumal, grandfather of the petitioner. After the



death of Perumal his son Kumarasamy alone enjoyed the property. His sister Muniammal relinquished her rights over the suit property in favour of Kumarasamy. The petitioner and the respondent are the sons of Kumarasamy. The suit property is the joint family property of the petitioner and the respondent. The petitioner's father Kumarasamy died on 04.11.2013. After his demise, the petitioner and the respondent are entitled for half share each in the suit property. While so the respondent is attempting to make constructions in the suit property. Hence, the petitioner was constrained to file an application under Order 39 Rule 1 & 2 and 151 of CPC for temporary injunction, restraining the respondent from making any constructions and not to encumber the suit property till the disposal of the suit. However, the trial Court dismissed the said application by stating, the respondent is in the possession of the suit property and the petitioner is not entitled for any injunction against the respondent. Hence, the petitioner preferred an appeal in C.M.A.No.47 of 2016, against the order passed in I.A.No.405 of 2016 by the learned Principal Siub Judge, Tirunelveli dated 26.10.2016. The learned III Additional District Judge, Tirunelveli dismissed the appeal and confirmed the order passed by the learned Sub Judge, Tirunelveli. Aggrieved by this, the present revision is preferred.



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4.The learned Counsel appearing for the petitioner would submit that the Courts above failed to apply the proper principles of law applicable to the facts of the case. The Courts above ought to have held that the suit property is the ancestral property and not the separate property of the father of the parties. Therefore, the gift deed executed by the father is not valid in the eye of law. He would further submits that if the respondent is allowed to make constructions and encumber the suit property, it would cause great hardship to the petitioner. The revision petitioner has a prima facie case and the balance of convenience is in favour of the revision petitioner. By allowing this application no prejudice would cause to the respondent.

5.On the other hand, the learned counsel appearing for the respondent would submit that the father of the petitioner and the respondent had executed a settlement deed on 23.09.2013 in favour of the respondent in respect of the suit property. The respondent is paying tax to the property and had spent lakhs of rupees for constructing a house in the suit property. The respondent alone is residing in the said house and the claim of the petitioner that the property is a joint family property is false.



6. Heard on both sides and records perused.

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7. The point for consideration is that

Whether the petitioner is entitled for an order of temporary injunction restraining the respondent from putting up construction in the suit property and from encumbering the property till the disposal of the suit?

8. It is not in dispute that the petitioner and the respondent are the sons of one Kumarasamy and it is a suit for partition. This petition is for temporary injunction restraining the respondent from putting up any construction in the suit property and not to encumber the same. The petitioner has relied upon the Ex.P.1 to Ex.P.4 respectively. Ex.P.1 is the Advocate notice demanding partition, Ex.P.2 is Acknowledgement card, Ex.P.3 is the reply notice and Ex.P.4 the settlement deed in favour of the respondent.

9. On the other hand, the respondent has produced Ex.R.1, the assignment order in favour of his grandfather Perumal dated 16.08.68, Ex.R. 2 the settlement deed in favour of the respondent and Ex.R.3 to Ex.R.7 Tax receipt, the Electricity bill and the encumbrance certificate to establish his



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possession in the suit property. Ex.R.8 is the death certificate of Kumarasamy. Whether the said Kumarasamy has absolute right over the property can be decided only at the time of trial. The documents produced on the side of the respondent would show that respondent is in possession of the suit property. The petitioner failed to establish his possession in the suit property to interim relief. The balance of convenience is not in his favour. The petitioner has not made out a prima facie case and also failed to establish that the denial of injunction would result in great hardship to him. Hence, the Courts below has rightly dismissed the petition filed by the petitioner for temporary injunction which calls for no interference.

10.In the result, this Civil Revision Petition is dismissed. The order passed by the learned III Additional District Court, Tirunelveli in dismissing the appeal filed in C.M.A.No.47 of 2016 by confirming the order of the trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2023

jen/vsn



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To

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1.The III Additional District Munsif Judge, Tirunelveli

2.The Principal Subordinate Judge, Tirunelveli,



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