



CRP.No.3872 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.DHANABAL

C.R.P.No.3872 of 2022 and
C.M.P.No.20328 of 2022

C.Mahendran

... Petitioner

Vs.

1. C.Elangovan

2. The Tamil Nadu New Print Limited
Rep by its General Manager (Logistics)
Registered Office at Kakithapuram
Velayumthampalayam Village
Karur Taluk and District

3. Godrej agro Pvt Ltd
Rep by its Manager
Registered Office at Plot.1,
Nandha Nagar, No.1, Tollgate,
Pichanadarkovil Village, P.O,
Trichirapalli – 621 216.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 06.08.2022 passed in I.A.No.4 of 2022 in O.S.No.11 of 2015 on the file of the Additional District Judge, Ariyalur.

For Petitioner : NA
For R1 : M/s.S.Kamadevan



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For R2 : Mr.K.Balamurali for
M/s.Shivakumar and Suresh

ORDER

The Civil Revision Petition has been filed by the petitioner as against the order passed in I.A.No.4 of 2022 in O.S.No.11 of 2015 on the file of the learned Additional District Judge, Ariyalur.

2. Before the trial Court, the petitioner herein filed an application in I.A.No.4 of 2022 to implead the petition mentioned properties in the description of the suit properties. The said petition was dismissed by the trial Judge. Aggrieved by the said order, the present Civil Revision Petition has been filed by the petitioner.

3. According to the petitioner, he is the plaintiff in the main suit. The main suit was filed for partition, separate possession and for mesne profits. The petition mentioned properties are ancestral properties and the same was mentioned in the unregistered partition chit. Now, the petitioner came to understand about the omission of the petition mentioned properties. Therefore the said properties have to be included in the suit schedule. But the trial Court dismissed the petition.



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4. According to the respondent, the suit for partition was filed in respect of the properties allotted to the petitioner's brother and father. In fact, the properties of the petitioner's family were partitioned between them on 07.08.1972 through registered partition deed. In the said partition deed, Schedule A properties were allotted to plaintiff/petitioner's father namely Chidambaranathan. Schedule B properties were allotted to deceased Rajendran. Schedule C properties were allotted to first Respondent. These properties were allotted to the first respondent through the partition deed. Therefore the properties are not available for partition, as it was already allotted as share of the first respondent. Therefore the trial Court has dismissed the petition.

5. Even before trial Court, no oral or documentary evidence adduced on both sides and the trial Court dismissed the petition.

6. The learned counsel appearing for the petitioner would contend that the petitioner has filed main suit for the relief of partition and separate possession of the family properties. The petition mentioned properties were omitted to be mentioned in the plaint in the property description. Now only the petitioner came to know about the properties and thereby, the properties



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have to be included in the suit schedule. The Trial Court without considering the case of the petitioner dismissed the petition by holding that the suit was filed for the property allotted to the share of his father Chidambaranathan and brother Rajendran and now relying upon the properties allotted through partition chit and the main suit was filed in the year 2015 and now the case is posted for defendant side evidence, at the stage, the petitioner had filed this petition. Thereby dismissed the petition. The above said order of the trial Court is erroneous and is liable to be dismissed.

7. Learned counsel appearing for the respondent would contend that the suit filed by the petitioner/plaintiff is for partition in respect of the properties already partitioned between family members through Partition deed, dated 07.08.1972. In the said partition deed, the father of the plaintiff/petitioner, Chidambaranathan was allotted Schedule A properties and the brother Rajendran was allotted Schedule B properties. The petitioner's brother Rajendran and father Chidambaranathan died and thereby the properties allotted to them have to be partitioned between the petitioner/plaintiff and respondents/defendants. While so, the petition mentioned properties are not family properties available for partition. The



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same were allotted as share of the first defendant through the partition deed dated 07.08.1972 as schedule C properties. Therefore the above suit properties are not family properties and the petitioner/plaintiff in the petition categorically stated that those properties are referred only in unregistered partition chit. But the petitioner had not produced any documents to that effect, thereby the trial Court correctly dismissed the petition. Therefore the learned counsel prayed to dismiss the Civil Revision Petition.

8. Heard both the counsels and perused the materials available on record.

9. In this case, there is no dispute that the main suit was filed for partition and separate possession. According to the petitioner, he filed suit for partition of the properties of his deceased father and brother. He claimed suit properties through the partition deed dated 07.08.1972. In the said partition deed, the schedule A and B properties are the subject matter of the suit. Now the petitioner filed this petition alleging that some other properties were omitted and to be included which were referred in the unregistered partition chit. There is no document produced to show the unregistered partition chit and also, already the petitioner being the plaintiff filed suit only in respect of the properties of his deceased father Chidambaranathan



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and brother Rajendran through partition deed dated 07.08.1972. While so, it is the duty of the petitioner to produce some documents in respect of the properties mentioned in the petition sought to be included in the suit. But the petitioner has not filed any document to prove that the petition mentioned properties are the family properties belongings to the joint family and they are available for partition.

10. Per contra, according to the first respondent, the suit properties were allotted to the first respondent /defendant through the said partition deed dated 07.08.1972 as Schedule C properties and these properties also referred in the said partition deed. Therefore the contention of the petitioner that the properties belongs to the joint family through unregistered partition chit has not been proved. Therefore the contention of the petitioner is not acceptable. Further the petitioner has filed this petition at the stage of defendant side evidence without any reasons for the delay in filing the petition. It shows the intention of the petitioner.

11. In this context, trial Court after elaborate discussion, correctly dismissed the petition. Therefore the order passed by the trial Court is in order and does not warrant any interference. In view of the above said discussion, this Court is of the opinion that the petition does not have any



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merits and is to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently connected miscellaneous petition is closed.

23.04.2024

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Internet : Yes/No

Index: Yes/No

Speaking Order: Yes/No

NCC : Yes / No

To

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P.DHANABAL, J.

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