



C.R.P.No.3802 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.R.P.No.3802 of 2022

and

C.M.P.No.20009 of 2022

Selvan

... Petitioner

Vs.

1.Palanisamy

2.Karuppannan

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of The Constitution of India, to set aside the fair and decretal order dated 08.06.2022 passed in I.A.No.2 of 2021 in I.A.No.433 of 2015 in O.S.No.236 of 2008 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.T.L.Thirumalaisamy for R1

No appearance for R2



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ORDER

This Civil Revision Petition has been preferred to set aside the fair and decreetal order dated 08.06.2022 passed in I.A.No.2 of 2021 in I.A.No.433 of 2015 in O.S.No.236 of 2008 on the file of the Additional District Munsif Court, Tiruchengode.

2. Heard Mr.S.Senthil, learned counsel for the petitioner and Mr.T.L.Thirumalaisamy, learned counsel for R1.

3. The petitioner herein has filed an application in I.A.No.2 of 2021, to implead him as one of the party to the proceedings under Order I Rule 10 of CPC and the same was dismissed by the Trial Court. As against the dismissal order, the petitioner has preferred this Civil Revision Petition. According to the petitioner, he is the third party to the proceedings. The first respondent / plaintiff has filed a suit for partition as against the second respondent / defendant for the relief of partition and separate possession and the said suit was decreed on 19.12.2013 and a preliminary decree was passed. Based on the preliminary decree, the plaintiff filed an application for passing final decree in I.A.No.433 of 2015 and in the said application, an Advocate Commissioner



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was appointed and he inspected the property on 18.09.2021. At that time only, the petitioner came to know about the pendency of the proceedings.

4. The petitioner has filed an another suit in O.S.No.106 of 2021 on the file of the Principal District Munsif, Namakkal for the relief of partition as against the respondents and others. In that suit, except S.F.No.306/8 all other properties have to be divided into six shares and one share has to be allotted to the share of the petitioner. In S.F.No.306/8, the petitioner is entitled to 1/9 share over the property and thereby he filed the suit. The father of the petitioner viz., the second respondent herein is acting against the interest of the petitioner and thereby, he has not seriously contested the suit. Therefore, the petitioner has to be impleaded as party to the suit to defend the case in respect of his share.

5. According to the first respondent, he filed a suit for the relief of partition and declaring that the settlement deed dated 17.09.2004 as null and void and the suit was contested by the second respondent / defendant and after hot contest, the suit was decreed and a preliminary decree was passed on 19.12.2013 and thereafter, the first respondent filed an application for passing



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final decree and for appointment of Advocate Commissioner and the Commissioner has inspected the property and now, at the stage of passing final decree, at the instigation of the second respondent / defendant, the petitioner has filed the application and the petitioner has not filed any application in the preliminary decree proceedings and now, filed an application in final decree proceedings. Without setting aside the preliminary decree, the relief sought by the petitioner cannot be granted. Therefore, this Revision Petition is liable to be dismissed.

6. Before the Trial Court, no oral or documentary evidence is adduced by the parties. The Trial Court after considering both sides arguments, dismissed the application. Aggrieved by the said order, the petitioner is before this Court.

7. The learned counsel for the petitioner would contend that the petitioner filed an application to implead him as one of the party to the proceedings. He is the son of the second respondent / defendant and he has 1/6 share over the suit property. The father of the petitioner viz., the second respondent / defendant herein has not contested the suit properly and he is



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acting against the rights of the petitioner and thereby he has to be impleaded as a party to the proceedings. By impleading the petitioner, no prejudice would be caused to the other side. Per contra, if he is not impleaded, the petitioner's right would be affected. The Trial Court has failed to consider the contention of the petitioner and simply dismissed the application that since the case is posted for passing final decree. Therefore, the order of the Trial Court is liable to be set aside by allowing this Civil Revision Petition.

8. The learned counsel for the first respondent submitted that the petitioner is none other than the son of the second respondent / defendant. The petitioner very well know about the proceedings from the beginning. The first respondent / plaintiff has filed final decree proceedings and now, the petitioner has filed an application to implead him in order to delay the proceedings at the instigation of the second respondent / defendant. The case was posted for passing final decree. If at all the petitioner is having any right over the property, the same can be agitated through the suit filed by him in O.S.No.106 of 2021 pending on the file of the Principal District Munsif, Namakkal. Therefore, the Trial Court after considering the entire materials, correctly dismissed the petition. Therefore, the present Civil Revision Petition is liable to



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be dismissed.

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9. This Court heard both sides and perused the materials available on record. In this case, the petitioner has filed an application before the Trial Court to implead him as a party to the proceedings by alleging that he is one of the share holder of the property. According to the petitioner, the second respondent / defendant who is the father of the petitioner is acting against him, thereby, he could not contest the case properly. Therefore, he has to be impleaded as a party to the suit proceedings.

10. According the first respondent / plaintiff, the petitioner very well know about the proceedings of the case from the beginning and already a preliminary decree was passed. Now the case is at the stage of passing of final decree and the case was hotly contested by the second respondent / defendant. At this stage, he filed an application to implead him as a party. Therefore, his presence is not necessary.

11. It is admitted that the first respondent / plaintiff has filed a suit for the relief of partition in the main suit and thereafter a preliminary decree was



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passed. The second respondent / defendant in the suit is none other than the brother of the first respondent / plaintiff and he being father of the petitioner has made a substantial representation on behalf of the petitioner. It is an admitted fact that already preliminary decree was passed on 19.12.2013 and thereby final decree application was filed in the year 2015 and now, a Commissioner was appointed and the Commissioner has also inspected the property on 18.09.2021 and the case is now posted for passing of final decree. At this stage, the petitioner has filed the Application to implead him. Since already the father of the petitioner (i.e) the second respondent / defendant has been arrayed as a party in the suit filed for partition and the defendant hotly contested and he also represented on behalf of his branch, the presence of the petitioner in the final decree proceedings is not essential. The petitioner has not challenged the preliminary decree proceedings and he filed a petition only to implead him in the final decree proceedings. The conduct of the petitioner shows that in order to delay the proceedings, he filed the said application.

12. Further, it is an admitted fact that the petitioner already filed a suit by including all the properties as against the respondents herein and others and the same is also pending. If at all the petitioner is aggrieved by the final decree



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proceedings, he can still agitate before the pending suit in O.S.No.106 of 2021.

Therefore, the contention of the petitioner is not acceptable and he is not a proper and necessary party to the suit. It is well settled that proper and necessary party means without who's presence, the suit could not be disposed of effectively, he is a proper and necessary party to the suit. But, in this case already his father is representing the share of his family and thereby, in the absence of the petitioner, the suit can be decided effectively. Already the rights of the parties were declared and the properties were also ordered to be divided into two equal parts. Therefore, the petitioner is not a proper and necessary party to the proceedings. The Trial Court also in the order, correctly discussed that the second respondent represented the case and already a preliminary decree was passed and the contention of the petitioner that now only he came to know about the case is not acceptable and the application has been filed only to delay the proceedings and correctly dismissed the application. Therefore, the order passed by the Trial Court is a reasoned order and it does not warrant interference from this Court. In view of the above discussions, this Court is of the opinion that this Revision Petition has no merits and deserves to be dismissed.



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

Consequently, connected miscellaneous petition is closed.

Index: Yes/No

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Speaking / Non Speaking Order
gsk

To
The Additional District Munsif Court,
Tiruchengode.



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P.DHANABAL,J.

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