



C.R.P(MD)No.749 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.749 of 2019

and

C.M.P(MD)No.4504 of 2019

R.Kamaraj

... Petitioner

Vs.

1.R.Gandhi

2.P.Ramasamy

3.V.Kalaiyarasi

4.The State of Tamil Nadu,
Represented by District Collector,
Collectorate, Karur.

5.The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai,
Karur District.

6.The Thasildar,
Taluk Office,
Krishnarayapuram,
Karur District.

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7.Sekar

8.Perumal

9.Marudamuthu

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.195 of 2016 in O.S.No.54 of 2015, dated 10.10.2018 on the file of the Principal District Court, Karur and thereby reject the suit made in O.S.No.54 of 2015 on the file of the Principal District Court, Karur.

For Petitioner : Mr.P.R.Prithiviraj

For R-1 : Mr.K.Govindarajan

For R-2 & R-3 and
R-7 to R-9 : No appearance

For R-4 to R-6 : Mr.C.Satheesh
Government Advocate

ORDER

The present revision petition has been filed by the second defendant in O.S.No.54 of 2015 on the file of the Principal District Court, Karur challenging the order passed in I.A.No.195 of 2016,



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wherein the Trial Court had rejected an application filed under Order VII, Rule 11 of CPC.

2. The first respondent herein had filed the above suit for the relief of partition and separate possession of three schedules of property. Pending suit, the second defendant had filed I.A.No.195 of 2016 to reject the plaint on the following grounds:

a) Some of the suit schedule properties have already been sold to third parties and the third parties having not been impleaded, the suit is not maintainable.

b) Some of the suit schedule properties are the separate and absolute properties of the second defendant's wife. The second defendant's wife, having not been impleaded, the suit is bad for non-joinder of necessary parties.

c) Some of the suit schedule properties have been sold by the first defendant in favour of third parties, the sale deeds have not been challenged. Therefore, the suit for partition is not maintainable.



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3. The Trial Court after considering the submissions made on either side has arrived at a finding that these issues have to be decided at the time of trial and proceeded to dismiss the application. Challenging the same, the present revision petition has been filed.

4. A perusal of the grounds raised by the second defendant for rejection of plaint clearly indicate that for non-joinder of necessary parties, the plaint has to be rejected. Whether a particular party is a necessary party or not has to be decided only during trial. That apart, only when the plaintiff is a party to a document, the question of challenging the said document would arise. Admittedly, the sale deeds have been executed by the first defendant in favour of some third parties. Therefore, the plaintiff would be entitled to seek for partition without challenging those documents. Therefore, the Trial Court was right in dismissing the application under Order VII, Rule 11 of CPC. The learned Counsel appearing for the respondents also brought to the notice of the Court, the trial has already commenced. Therefore, the second defendant



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would be at liberty to raise these issues at the time of trial.

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5. With the above said observation, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Principal District Court,
Karur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The District Collector,
The State of Tamil Nadu,
Collectorate, Karur.

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4.The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai,
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5.The Thasildar,
Taluk Office,
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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.749 of 2019

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