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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 23.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**CRP(MD)No.1500 of 2024
and
CMP(MD)No.8846 of 2024**

Karuppaiyan

... Petitioner/Respondent/Plaintiff

VS.

1.Sudhakar

... Respondent/ Petitioner / 3rd Party

2.Yasothaiammal

Ravichandran (died)

3.Ekambaram

4.Amutha

5.Minor Aravinthan

6.Minor Saleswaran

... Respondents/defendants

(5th and 6th minor respondents
are rep.by their natural guardian
and mother/4th respondent)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside order allowing I.A No.108 of 2022 in O.S No.21 of 2008 on the file of the I Additional District and Sessions Judge, (PCR), Thanjavur dated 09.01.2023.



For Petitioners : Mr.K.R.Laxman

For Respondents : Mr.A.N.Ramanathan for R1

R2, R3, R5 and R6 – No appearance

Ms.T.Susithra for Mr.S.Bharathy Kannan
for R4

ORDER

Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the fourth respondent. The second respondent is served and her name was also printed in the cause list. Yet, she has not chosen to enter appearance.

2.Karuppaiyan, the petitioner herein filed O.S No.21 of 2008 on the file of the First Additional District Judge (PCR), Thanjavur seeking half share of the suit schedule properties. It is not in dispute that “A” and “B” schedule properties are ancestral properties. V.Karuppaiyan and Periyasamy Pillai were born to Veeraiya Pillai. Both “A” and “B” schedule properties were in the name of Veeraiya Pillai. Periyasamy Pillai passed away leaving behind his wife Yasothaiammal and sons Ravichandran and Ekambaram as his legal heirs. Therefore, the suit was instituted by the revision petitioner herein against the legal heirs of Periyasamy Pillai. During the pendency of the suit, Yosaitaiammal and Ravichandran also passed away. That is how, Ravichandran's wife Amutha and her children were brought on record as D4 to D6. The suit was instituted on



09.04.2008. Preliminary decree was passed on 14.12.2016 in the following terms :

- “1.that the suit is be and hereby partly allowed.
- 2.that the plaintiff is entitled to 1/2 share in item Nos. 1,2,4,7,8,9,12,13,14,15 and 17 of A Schedule properties and Item Nos.1,3, 4 of B Schedule properties and the plaintiff is not entitled to any share in item No.3,5,6,10,11 and 16 of A Schedule properties and item No.2 of B Schedule properties and to that effect a preliminary decree was passed.
- 3.that the parties are directed to divide the properties in 2 equal shares and allot 1 share to the plaintiff and put him in separate possession of his respective shares failing which the plaintiff is permitted to file final decree application before this for the division of the properties”.

The plaintiff thereafter filed I.A No.1 of 2019 for passing final decree. In the final decree petition, the first respondent herein, namely, Sudhakar filed I.A No.108 of 2022 for impleading himself. The court below vide order dated 09.01.2023 allowed the impleading petition. Challenging the same, this civil revision petition has been filed.

3.It is seen that Thiru.Ravichandran and Ekambaram, the sons of Periyasamy Pillai executed sale deed dated 05.06.2008 (D No.1624 of 2008) on the file of the SRO, Vallam in favour of Mrs.Thenmozhiselvi conveying 55 cents of land in S.No.186/4, Alakudi Village which was



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included as Item No.17 in Suit A schedule property. Vide Document No. 2503 of 2009 on 23.09.2009 on the file of the SRO, Vallam Mrs.Thenmozhiselvi settled the same in favour of her son/the first respondent herein. The judgment dated 14.12.2016 in O.S No.21 of 2008 granting preliminary decree has become final and it has not been put to challenge. It is beyond dispute that Karuppaiyan, the revision petitioner herein has half share in each of the items of the suit schedule. Therefore, Ravichandran and Ekambaram could not have sold the entire property in favour of Thenmozhiselvi vide sale deed dated 05.06.2008.

4.After Item No.17 of the “A” Schedule property was settled in his favour, Sudhakar applied to the authorities concerned and put up a petrol bunk. As on date, Sudhakar is running the same under Indian Oil Corporation Limited in the name and style of “PDS Agencies”. Facing heat due to the initiation of final decree proceedings, Sudhakar filed I.A No.108 of 2022 for allotment of property sold in favour of his mother to him. He also filed I.A No.109 of 2022 for setting aside the preliminary decree. Both the I.As were allowed on 09.01.2023. Questioning the said order, Karuppaiyan filed CRP (MD)No.696 of 2023. The said CRP was dismissed. Questioning the same, Karuppaiyan filed SLP No.8640 of 2024 before the Hon'ble Supreme Court of India. Notice has been ordered and it is pending. When CRP(MD)No.1500 of 2024 questioning the order made in I.A No.108 of 2022 came before me, I indicated to the parties on either



side to arrive at an amicable solution. I am happy to record that the suggestion put forth by the court was accepted by both the parties.

5.Survey No.180/4B, Alakudi Village, Thanjavur Taluk measures total extent of 55 cents. It has been measured in the presence of both the parties. A rough sketch has been (not drawn on scale) made ready and it has been signed by both the parties as well as their counsel. Copy of the said sketch is annexed to this order. It shall form part of it. Sudhakar is running a petroleum outlet in B,C,D,E,G,H and I. It measures 1150 square meters. Karuppaiyan has no objection for Sudhakar to enjoy BCDEGHI and for running his petrol bunk. Since the defendants had already alienated Item No.17 of "A" Schedule and since Karuppaiyan has clear half share in the said item, in order to give quietus to the outstanding issues between the parties i.e. the petitioner on the one hand and the first respondent on the other, it is declared that the property comprised in ABCDEF as set out in the sketch belongs to Karuppaiyan, the revision petitioner herein, in these proceedings itself and that the property comprising in ABCDEF is his absolute property and that he can deal with it in any manner he deems fit. It is also open to the parties herein to register this order ; as and when, it is presented for registration, the jurisdictional Registrar is directed to register the same.



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6.Sudhakar's mother had purchased 55 cents of land vide sale deed dated 05.06.2008 from Ravichandran and Ekambaram. Such a sale was clearly in excess of what the vendors were really entitled to. In fact, the learned counsel for the revision petitioner brings it to my attention that the sale was made in breach of the injunction order granted in favour of Karupaiyan in I.A No.47 of 2008. Thus, on account of the division of Item No.17 of "A" schedule properties, Sudhakar has been put to loss. He is entitled to compensate himself by seeking equity in the matter of the other items of the suit schedule. Karupaiyan informs this Court that he would take steps for withdrawing SLP No.8640 of 2024.

7.The impugned order is sustained insofar as it impleads Sudhakar as party to the final decree proceedings. In all other aspects, it is set aside. Karupaiyan is aged about 82 years. He is a senior citizen. The court below is directed to dispose of I.A No.1 of 2019 on merits and in accordance with law within a period of six months from the next hearing date.

8.This civil revision petition is disposed of. No costs. Connected miscellaneous petition is closed. No costs. Connected miscellaneous petitions are closed.

23.10.2024

Index : Yes/No
Internet:Yes/No
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To

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G.R.SWAMINATHAN, J.

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