



C.R.P(MD).No.151 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 04.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.151 of 2015

1.P.Sundararajan @ Sundaram

2.T.Rajan

... Revision Petitioners

Vs.

K.Ambrose (died)

S.Chellappan (died)

3.C.Radhakrishnan

4.Ratnabai

5.Thompson @ Sundarajan

... Respondents 3 to 5

(Respondents 3 to 5 remained exparte before trial Court)

6.Johnson

7.Pillominal

8.Mary

9.Mariya Vincent Raj

(Respondents 6 to 9 are impleaded as per order of this Court, vide order dated 04.03.2024 in Crl.M.P. (MD).No.3605 of 2024)

10.Gnanaselvam

11.Bright

12.Jeya

13.Kala Amalraj

1/7



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14.Suja Paul Jill Singh

15.Sheeba Rajendran

... Respondents 6 to 15

(Respondents 10 to 15 are impleaded as per order of this Court, vide order dated 04.03.2024 in CrI.M.P. (MD).No.3611 of 2024)

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the Civil Revision Petition and set aside the order passed in I.A.No.91 of 2014 in O.S.No.392 of 2008, dated 05.07.2014 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioners : Mr.M.Suresh

For Respondents : No appearance for R6, 7, 9 & R13

: Exparte for R3 to R5

ORDER

The defendant in O.S.No.392 of 2008 filed this revision petition challenging the fair and decreetal order passed in I.A.No.91 of 2014 filed under Order 26 Rule 9 and Section 151 of C.P.C., to appoint Advocate Commissioner to measure the suit scheduled properties.

2. The original plaintiff, namely, K.Ambrose, the first respondent herein filed a suit for declaration of the title and possession over the plaint



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B and C scheduled properties and consequential prayer of permanent injunction restraining the petitioner from interfering with the peaceful possession and enjoyment of the properties. According to the plaintiff, the petitioners are also co-sharers of the suit scheduled properties and their ancestors entered into oral partition and they got the properties described in the 'B' and 'C' Scheduled properties. To prove the oral partition, they sought appointment of the Advocate Commissioner to show that the possession and enjoyment was done as per the oral partition. The same was contested by the petitioner by filling a counter. The learned trial Judge, without considering the counter, stated that the appointment of the Advocate Commissioner to show the possession as per oral partition is necessary and allowed the application by the impugned order dated 05.07.2014.

3. The learned counsel appearing for the petitioners submitted that the said case is relating to oral partition and the same has to be proved in accordance with law either by document or oral evidence. But the appointment of the Advocate Commissioner to show separate enjoyment, as per the oral agreement, means collection of the evidence. Hence, he seeks for dismissal of the application by allowing the civil suit. Further, he



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submitted that even otherwise the learned trial Judge ought to have ordered to measure the entire suit scheduled properties including the enjoyment by the petitioner also. Hence, there is infirmity in the impugned order and hence, he seeks for the dismissal of the order passed by the trial judge in I.A.No.91.2014.

4. Initially, Mr.C.K.M.Appaji, learned counsel appeared. Subsequently, the respondents 1 and 2 died and hence, petitions were filed to implead the legal heirs of the respondents 1 and 2 and all the legal heirs were issued with notice. Out of the 10 representatives, more than 6 representatives were not served with notice. This Court considered that sufficient representation is available to contest the case.

5. This Court perused the plaint and also the impugned order passed by the learned trial Judge.

6. In the plaint, it is specifically stated that as per the oral partition, suit 'A' scheduled property has been allotted to 10 members of the persons and specifically pleaded each scheduled properties were allotted to member



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of the persons as stated in the plaint. Hence, he seeks for declaration of injunction for his possession as per the oral partition. In the said circumstances, it is duty of the plaintiff to prove the case of the oral partition by producing the sufficient documents and oral evidence. When there is an oral partition, appointment of Advocate Commissioner to find out the specific possession of the specific portion of the properties, as rightly argued by the learned Counsel for the petitioners, amounts to collection of the evidence. Hence, this Court accepts the contention of the petitioner.

7. Accordingly, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.91 of 2014 dated 05.07.2014, on the file of the Principal District Munsif Court, Padmanabhapuram. No costs.

04.03.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note: Issue Order Copy on 20.03.2024.



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- 1.The Principal District Munsif Court,
Padmanabhapuram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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Dated: 04.03.2024