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C.R.P.(PD).No. 462 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.462 of 2025

&

C.M.P.No. 2795 of 2025

Rajendran

...Petitioner

Vs.

1.R.Andiappan

2.Chandrasekaran

3.Annadurai

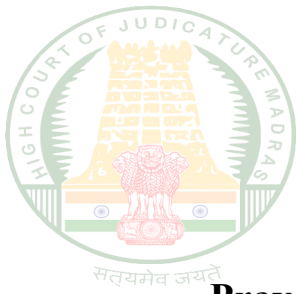
4.Palani

5.Anandayee

6.Lakshmi

7.Chinnathayee

...Respondents



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed on 04.11.2024 in IA.No.1 of 2023 in OS.No.295 of 2011 on the file of the I Additional Sub Court, Salem.

For Petitioner : Mr. S.Balasubramanian

For Respondent 1: Mr. R.Nalliyappan

For Respondents : No Appearance
2 to 7

ORDER

Challenging the appointment of an Advocate Commissioner in the final decree proceedings by the learned I Additional Sub Judge, Salem, in IA.No.1 of 2023 in OS.No.295 of 2011, the petitioner is before this Court. The facts are briefly set out herein below.

2. The 1st respondent / plaintiff had filed the aforesaid suit seeking a partition and separate possession in respect of his 8/35th



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share. The plaintiff's case is that the property belonged to one Seerangan and his sons. After Seerangan's death his sons enjoyed the property without a partition. One of the sons Palani sold his share of 10 cents in favour of R.Palanisamy, the plaintiff's father under a registered sale deed dated 14.01.2008. Thereafter, Palanisamy executed a gift settlement deed dated 09.08.2010 in favour of the plaintiff. Therefore, the plaintiff had become owner of the property and sought for partition. After trial, a preliminary decree was passed directing the defendants to divide the property into 35 equal shares and allot 8 shares to the plaintiff.

3. The defendants had filed AS.No.27 of 2015 challenging the aforesaid decree which was dismissed on 16.08.2017. Even thereafter they had not come forward to subdivide the property. The preliminary decree for partition was passed on 28.03.2014. The plaintiff therefore came forward to file an application, IA.No.1 of 2023 for passing of final decree.



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4. The 1st defendant filed a counter inter alia contending that he is a co owner and co sharer of the property and he is entitled to a right of preemption or preferential right in the final decree stage. He would further submit that on 09.08.2010 his brother Palanisamy executed a settlement deed in his favour. It is the case of the 1st defendant that the value of the property stated in the sale deed dated 14.01.2008 was Rs.1,00,000/-. Therefore, the value of the relief of right of preemption or preferential right would also be Rs.1,00,000/-.

5. The learned Trial Judge after a detailed enquiry allowed the application and appointed one Mr.S.Ramadurai as an Advocate Commissioner. Aggrieved by the said order the 1st defendant is before this Court.

6. The contention of the 1st defendant is that he is entitled to claim a preemption or preferential right. He would rely upon the Judgement of the Hon'ble Supreme Court in **2000 (iv) CTC 503 – Gautam Paul Vs. Debi Rani Paul** which states that where a 3rd party



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purchaser files a suit for partition the right of preemption will open for the co-sharers. He also relied upon the Judgement reported in **2012 (3) CTC 495 – N.Manickam Vs. Kanagaraj and others.** He would also argue that the application for preemption has been made within the stipulated time. However, the learned Trial Judge has wrongly rejected the application.

7. Per contra, Mr. R.Nalliyappan, learned counsel appearing on behalf of the 1st respondent / plaintiff would submit that the request for preemption was claimed in the suit and rejected. Thereafter, once again the same was canvassed in the appeal filed against the preliminary decree and rejected. The very same claim is made in the final decree proceedings. In support of his contentions he would rely upon an unreported Judgement of this Court in **AS.MD.No.206 of 2020** and **CRP.No.2315 of 2016 – S.M.Venkatachalam Vs. Valli.**

8. Heard the learned counsels on the either side and perused the records.



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9. The petitioner / 1st defendant appears to have raised the very same claim before the Trial Court during the suit and also in the First Appeal. Both times, the request was turned down. The petitioner herein only seeks to have the property conveyed to him by exercising preemptive right. The Court below has observed that the petitioner cannot claim a preemptive right. Now after his claim had been rejected in the preliminary decree stage the petitioner once again is before this Court seeking the same relief. That apart, the petitioner ought to have made his claim immediately after his father's death. However, it has not been done so. The preliminary decree had been passed within a year of the 1st defendant purchasing the property.

10. The suit was filed was filed in the year 2011 and a preliminary decree was passed in the year 2014 and the appeal was disposed of on 2017. Therefore, taking into account the efflux of time and delay, the request is turned down. The Division Bench in the unreported Judgement supra has held that the right of preemption



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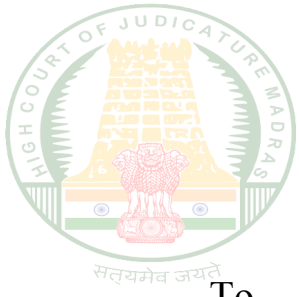
should be exercised within one year from the date of the plaintiff taking possession. The sale by the co-owner in favour of the plaintiff's father was way back on 14.01.2008 and the gift settlement deed in favour of the plaintiff was on 09.08.2010. The revenue records have been mutated in their names. Therefore, the suit for preemption ought to have been made within a year of the plaintiff's father taking possession.

11. The Civil Revision Petition is therefore dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No

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To
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The I Additional Sub Court,
Salem.



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