
(1968) 08 MAD CK 0038
In the Madras High Court

K.V.S. Varadaraja Chettiar

APPELLANT

Vs

K.V.C. Chenni Veeri Chettiar and Others

RESPONDENT

Date of Decision : 26-08-1968

Acts Referred:

Partition Act, 1893 — Section 3

Citation : (1969) 82 LW 98 : (1969) 1 MLJ 422

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—This petition is directed against the order of the Subordinate Judge of Salem dismissing an application u/s 3 of the Partition Act. There was an application u/s 2, but that application having been withdrawn the learned Subordinate Judge thought that the dismissal of the application u/s 3 should automatically follow.

2. I am unable to accept that view. Section 2 provides for sale of the property which is not capable of partition among the shareholders. But such a sale can be ordered only at the request of the shareholders interested individually or collectively, to the extent of one moiety or upwards, in the property. u/s 3, if a request of that kind has been made to the Court, any other shareholder may apply for leave to buy at a valuation the share or shares in the property and the Court shall then order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained. The policy of this provision appears to be that third parties should be avoided and the partition by that process should be confined to the shareholders. It seems to me that once a request has been made and an application on the basis of that request has also been filed u/s 3(1), the withdrawal of the request u/s 2 will in no way affect the application u/s 3 (1). Notwithstanding the withdrawal of the request u/s 2, the application u/s 3 (1) will have to be dealt with and disposed of on its merits. The only condition precedent for an application u/s 3 (1) is a request u/s 2 and once that condition

has been satisfied, any subsequent withdrawal of the request will be inconsequential to the continued maintainability of the application u/s 3

3. Umrao Singh and Another Vs. Umrao Singh, , does not appear to decide the point and there is no other case which directly deals with it. But Rajagopala Chettiar v. Razack Sahib (1950) 1 M.L.J. 29, and Vedachala Naicker Vs. P.K. Duraiswami Mudaliar, , provide the nearest parallel, which have been decided in the context of Section 9 of the Madras City Tenants Protection Act, 1921. It has been held in those cases that the subsequent withdrawal of the suit will not render the application filed u/s 9 infructuous, but the latter will have to be dealt with and disposed of according to the merits. I think the principle of these cases will have application to the instant case.

4. The petition is allowed. The lower Court is directed to dispose of the application u/s 3 (1) on its merits. No costs.