
(1974) 03 MAD CK 0047
In the Madras High Court

Sarayakaran alis Muniyan

APPELLANT

Vs

Perumal

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Partition Act, 1893 — Section 2, 3, 3(1)

Citation : (1974) ILR (Mad) 205 : (1974) 2 MLJ 208

Hon'ble Judges : K. Veeraswami, C.J

Bench : Single Bench

Judgement

K. Veeraswami, C. J.

1. The matter comes before us on a reference by Ganesan, J. The learned Judge thought that there was a conflict of decisions and therefore it should be resolved. But on the view we are inclined to take there is no conflict of decisions. The question is at what stage an application u/s 3(1) of the Partition Act of 1893, should be made: is it before an order has been made u/s 2, or can application u/s 3(1) be made even thereafter, but before the sale is actually held. That is how the question has been propounded by the referring Judge.

2. On a plain reading of Sections 2 and 3, it seems to us that the right to apply u/s 3(1) arises the moment a request has been made u/s 2. If a direction for sale of the property has been given u/s 2, it does not follow that an application u/s 3(1) cannot be made thereafter. All that is necessary is that in order that an application u/s 3(1) may be considered, the petitioner should apply to have the order u/s 2 set aside because, so long as that order stands, the application u/s 3(1) does not call for consideration. It may be even visualised that a sale has taken place u/s 2. Even in such a case, as it seems to us, there is no bar to be inferred from the two Sections to an application being made u/s 3 (1), but only it cannot be considered unless the order for sale made u/s 2 is set aside. That we think is the correct approach. We do not think that the question was considered in Angamuthu Mudaliar v. Ratna Mudaliar ILR (1925) 48 Mad. 920 : 49 M.L.J. 411 : AIR 1925 Mad. 1234, As to Jayarama v. Annamalai ILR (1966) 2 Mad. , we

agree with Kailasam, J., that a right to apply u/s 3(1) accrues the moment a request u/s 2 has been made to the Court. Beyond that stage, an application may always be permissible, but only, as we said, any order made u/s 2, or sale held pursuant to that order will have to get out of the way first before an application u/s 3(1) can be taken up for consideration.

3. On that view of the matter, we set aside the order of the Court of the District Munsif and remit the application u/s 3(1) to the Court for disposal, along with any application which the petitioner may have filed for setting aside the order for sale u/s 2. If no such application is made to set aside the order u/s 2, the application u/s 3(1) will naturally have to be dismissed.

4. The petition is accordingly ordered. No costs.