
(1973) 03 MAD CK 0055

In the Madras High Court

Case No : Civil Revision Petition No. 966 of 1971

Sarayakaran

APPELLANT

Vs

Perumal

RESPONDENT

Date of Decision : 12-03-1973

Acts Referred:

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

Citation : AIR 1973 Mad 448 : (1973) 86 LW 419

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

Bench : Division Bench

Judgement

Veeraswami, C.J.—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 decision. 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 an application u/s 3(1) could 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 under Sec. 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 visualized 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 Vs. Ratna Mudaliar and Others, 4. As to

Jayarama v. Annamalai ILR (1966) Mad 530 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 that 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.

5. Order accordingly.