

In the High Court of Judicature at Madras

Dated : 05.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.4666 of 2014 and M.P.No.1 of 2014

Mrs.D.Mangayarkarasi

...Petitioner

Vs

1.Smt.M.Rajeswari Ammal (deceased)

2.M.Neminathan

3.M.Janarthanan

4.Mrs.S.Suryabai

5.Mrs.M.Nirmala

6.N.Jothilakshmi

7.Sathish Babu Panchatcharam

8.Mrs.V.Girija Devi

9.Mrs.N.Shanthi

...Respondents

PETITION under Article 227 of The Constitution of India against the order dated 14.11.2014 made in I.A.No.15224 of 2014 in O.S.No.11907 of 2010 on the file of the Third Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.C.Rajan
For Respondent-2 : Mr.M.Sundar

ORDER

The petitioner has come up with the above revision petition seeking a direction to the Trial Court to dispose of an application under Order I Rule 10 of the Civil Procedure Code.

2. Heard Mr.C.Rajan, learned counsel for the petitioner. Mr.M.Sundar, learned counsel takes notice for the second respondent.

3. The petitioner herein, who is the daughter of one Madhava Mudaliar, filed a suit against her mother, two brothers and a sister in C.S.No.695 of 2003 on the file of this Court for partition and separate possession of her 1/5th share in the suit schedule properties. The second respondent took a stand in the suit that there was a release deed dated 2.2.1966, to which, the petitioner was a party.

4. The first respondent - mother died pending suit. After the stand taken by the second defendant setting up a release deed in defence, the petitioner filed an application in A.No.2385 of 2004 for amendment of the relief sought in the suit. The application for amendment was allowed by a learned Judge of this Court by an order dated 4.1.2006. The effect of the amendment was to include an additional prayer, for setting aside the release deed.

5. The order allowing the application for amendment was taken on appeal in O.S.A.No.196 of 2006. A Division Bench of this Court, by judgment dated 22.11.2006, disposed of the said appeal with a direction that it will be open to the defendants to raise the point of limitation at the time of trial.

6. Thereafter, due to change of pecuniary jurisdiction, the suit got transferred from this Court to the file of the Fast Track Court (Third Additional Judge, City Civil Court), Chennai and renumbered as O.S.No.11907

of 2010. Before the Fast Track Court, several applications came to be filed on both sides. Some of them were for interim orders of injunction and some were for impleadment.

7. In respect of one alienation made by one brother in respect of one item of property, the petitioner/plaintiff filed an application for impleading the alienees. This application in I.A.No.315 of 2011 was dismissed by the Trial Court. The dismissal order was upheld by this Court in C.R.P.(PD) No.1044 of 2012 by an order dated 23.8.2012, on the ground that the subsequent purchasers will be bound by the doctrine of lis pendens. While disposing of the said civil revision, the learned Judge also directed the Trial Court to take up the suit and dispose it of within six months, as the suit was already nearly ten years old. Therefore, the Trial Court appears to have taken up the suit for trial early.

8. After evidence on both sides was recorded and the case posted for arguments, the petitioner/plaintiff appears to have filed two applications one in I.A.No.14737 of 2014 and another in I.A.No.15224 of 2014. By the first application, the petitioner/plaintiff wanted an earlier application for injunction in I.A.No.2589 of 2013, to be disposed of pending the suit and by the second application, the petitioner/plaintiff wanted to implead a new set of parties, who are the alienees of a different property from yet another brother.

9. Faced with the dilemma of violating the time limit fixed by this Court in the earlier civil revision petition, the Trial Court appears to have adjourned

the application filed by the petitioner without disposing either the suit or the applications. Therefore, the petitioner is before this Court seeking a direction to the Trial Court to take up I.A.No.15224 of 2014 and dispose it of in accordance with law.

10. In the normal circumstances, the application of the petitioner/plaintiff for impleading the third party alienees, deserves to be allowed. It is my firm view that Section 52 of the Transfer of Property Act, should not be put against the parties these days, when litigation has become complex. It may not be in the interests of the alienees themselves not to be parties to a proceeding.

11. But unfortunately, my above view cannot be enforced in this case for two reasons. The first reason is that what applies to the rationale behind the decision of this Court in C.R.P.(PD).No.1044 of 2012 dismissing a similar application for impleadment, would equally apply well to the present application for impleadment, out of which, this civil revision petition arises. If an application for impleadment of the alienees of one property from one brother had been dismissed by this Court, it is not possible for me to allow the application for impleadment of another set of alienees by a different brother in respect of another set of properties.

12. The second difficulty in conceding the request of the petitioner is the report submitted by the Trial Court in response to the order passed by this Court on 8.12.2014 regarding the status of the case. As per the report of

the Trial Court, the evidence on the side of the plaintiff as well as the defendants was already closed. The plaintiff appears to have examined two witnesses and marked 32 documents as Ex.A.1 to Ex.A.32. The defendants examined one witness on their side. The evidence was closed and the case was posted for arguments on 3.7.2014.

13. As per the report of the Trial Court, it was only during the hearing of the main suit that the petitioner came up with two applications, one for disposal of the previous application for interim injunction and the other for impleading a set of third parties. In other words, much water has flown. What is sauce for the goose is the sauce for the gander. I think it will be better for the petitioner in her own interest to have a decree rather than retaining the suit at the interlocutory stage. As rightly pointed out by this Court in the earlier order, the suit is now 11 years old. It is a partition suit. Therefore, both parties have a very long way to go after having already covered a long distance.

14. Therefore, the civil revision petition is dismissed. No costs. Consequently, the above MP is also dismissed. It will be open to the Trial Court to proceed as per the earlier directions.

05.1.2015

Internet : Yes

To
The Registrar, City Civil Court, Chennai.

RS

V.RAMASUBRAMANIAN,J

RS

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and MP.No.1 of 2014

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