

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:30.10.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.NPD.Nos.362 to 364 of 2010

and

M.P.No.1 of 2010

Dinesh @ Thirumaran

...Petitioner

Versus

1.Nagabushanam

2.Anbalagan

3.Gunavathi

4.Paramasivam

...Respondents

Prayer: Revision petition is filed against the order passed by the learned Sub Ordinate Judge of Dharmapuri against the order of return in the I.A.S.R.No.4987 of 2009 in O.S.No.44 of 2007 dated 26.10.2009.

For Petitioner : Dr.P.Vasudevan

For RR1 &2 : Mr.V.A.Dhana Aravindha Balaji

For RR3 &4 : Mr.M.Venkatraman

ORDER

These three memorandums of civil revisions have been directed against the docket order dated 26.10.2009 and made in an unnumbered interlocutory application in I.A.S.R.No.4987 of 2009 in O.S.No.44 of 2007 on the file of the learned Subordinate Judge, Dharmapuri.

2. The revision petitioner herein is a third party in the suit in O.S.No.44 of 2007. However, he has filed three applications. One is under Section 5 of the Limitation Act, to condone the delay of 441 days in filing an application under Order IX, Rule 13, to set aside the exparte preliminary decree passed in the suit in O.S.No.44 of 2007, another application under Order I, Rule 10 of CPC to implead himself in the suit in O.S.No.44 of 2007 and the third one is under Order IX, Rule 13, to set aside the exparte preliminary decree passed in the above said suit. All the three applications are given common I.A.S.R. Number as No.4987 of 2009 by the learned Subordinate Judge, Dharmapuri.

3. It appears that the revision petitioner had originally filed a suit in O.S.No.135 of 2004, for partition as against seven defendants including the first defendant in the suit in O.S.No.44 of 2007.

4. It is also revealed that the suit in O.S.No.44 of 2007 also seems to have been filed by one P.Nagapoosanam and M.Anbalagan, seeking the relief of partition as against the first defendant. The respondents herein are one C.Gunavathi and Paramasivam.

5. It is obvious to note here that the suit properties specified under serial Nos.19 and 20 of the schedule of the plaint in the suit in O.S.No.135 of 2004 filed by the revision petitioner herein are the subject matter of the suit in

O.S.No.44 of 2007. What it transpires from the records is that a preliminary decree in the suit in O.S.No.44 of 2007 was passed on 08.08.2008. In pursuant to the preliminary decree, a final decree application in IA.74 of 2009 was also filed and the same is pending on the file of the learned Subordinate Judge, Dharmapuri. The suit in O.S.No.44 of 2007 was filed subsequent to the suit in O.S.No.135 of 2004. The revision petitioner, who has sought to be implead in the suit in O.S.No.44 of 2007 is not a party. Since the properties specified under serial Nos.19 and 20 in the suit in O.S.No.135 of 2004 are the subject matter of the suit in O.S.No.44 of 2007, if the final decree is passed in favour of the parties concerned to the said suit, the right of the revision petitioner who is the plaintiff in the suit in O.S.No.135 of 2004 would be very much affected. Therefore, he has come forward with an application, to set aside the preliminary decree dated 08.08.2008 passed in the suit in O.S.No.44 of 2007 alongwith two other applications to condone the delay in filing the application to set aside the preliminary decree, and to implead himself in the suit(O.S.No.44 of 2007).

6. But without considering all these aspects, the learned Trial Judge has simply rejected the above said three applications dated 26.10.2009, saying that the applications are not maintainable at this stage. Since this order is against the principle of natural justice, it has been challenged under this revision after invoking the provisions of Article 227 of the Constitution of India.

7. Heard Dr.P.Vasudevan, learned counsel appearing for the revision petitioner, Mr.V.A.Dhana Aravindh Balaji, learned counsel appearing for the respondents 1 and 2 and Mr.M.Venkatraman, learned counsel appearing for the respondents 3 & 4.

8. This Court has considered the submissions made by the learned counsels on either side and on perusal of the grounds of revision and the impugned order dated 26.10.2009, this Court finds that the impugned order dated 26.10.2009 may be set aside and the learned Trial Judge may be directed to number all the three applications and to dispose of the same on merits within a period of six weeks, after inviting objections from the other side.

9. Accordingly, all the three applications are allowed. The impugned order dated 26.10.2009 is set aside. The applications are remitted back to the Trial Court with a direction to number all the three applications and dispose of the same within a period of six weeks from the date of receipt of a copy of this order after inviting objections from the other side. Connected M.P. is also closed. No costs.

30.10.2015

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Index:Yes/No.

Internet:Yes/No.

To

The learned Sub Ordinate Judge,

Dharmapuri.

T. MATHIVANAN, J.
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