

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.458 of 2015

&

M.P.No.1 of 2015

1.S.Saranya
2.S.Vasanthakumar

... Petitioners

vs.

1.M.Karthikeyan
2.S.Subramaniyan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and order dated 23.12.2014 made in I.A.No.1892 of 2014 in O.S.No.142 of 2014 on the file of the Second Additional District Court, Tiruppur.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.S.Vinoth Kumar
for Mr.K.Goviganesan for R1

ORDER

This revision arises out of an order dated 23.12.2014 passed by the learned II Additional District Judge, Tiruppur in I.A.No.1892 of 2014 in O.S.No.142 of 2014. The above said suit was filed by the first

respondent herein originally for bare injunction against the second respondent herein alone. Subsequently, the plaint was amended and a prayer for declaration and a further prayer for mandatory injunction were also added.

2. The claim of the first respondent herein/plaintiff is made based on the sale deeds executed by the second respondent herein in favour of the father and mother of the first respondent herein, who are no more and settlement deeds executed by the parents of the first respondent in his favour. The petitioners in the revision are daughter and son of the second respondent. They contend that the suit property is a joint family property, of which both the petitioners and the second respondent were coparceners and that the alienation made by the second respondent is not binding on them. Based on the said contention, the petitioners filed a suit for partition in O.S.No.288 of 2014 on the file of the learned Additional Subordinate Judge, Tiruppur for partition and separate possession in which the second respondent alone was shown as the defendant. The second respondent remained ex parte in the said suit and a preliminary decree for partition came to be passed. Thereafter, the petitioners have chosen to file the above said application I.A.No.1892 of 2014 in O.S.No.142 of 2014 pending

on the file of the II Additional District Judge, Tiruppur for their impleadment as defendants 2 and 3. The learned trial Judge (II Additional District Judge, Tiruppur) dismissed the said application holding that the same was filed pursuant to a collusion between the petitioners herein and the second respondent herein. The said order of the trial Court dated 23.12.2014 is challenged by the petitioner in this revision preferred under Article 227 of the Constitution of India.

3. The first respondent has entered appearance. The learned counsel for the first respondent, without insisting upon a permission to file objections in the form of a counter, has come forward to argue the case on merit. Accordingly, the arguments advanced by Mr.N.Manokaran, learned counsel for the petitioners and by Mr.S.Vinoth Kumar, learned counsel for the contesting respondent (first respondent) are heard. The copy of the impugned order, grounds of revision and copies of the other documents produced in the form of typed-set of papers are also perused.

4. It is the contention of Mr.N.Manokaran, learned counsel for the petitioner that so long as the suit remained as a bare injunction suit, the same did not bother them and hence, they were not forced to

file any petition to get them impleaded in the said suit and that on the other hand, when the plaint was amended and by such amendment, a prayer for declaration of title in respect of the suit properties was also included, it became necessary for them to approach the trial Court with the application to get them impleaded as party defendants. It is his further contention that if at all they are not impleaded as party defendants in the suit filed by the first respondent seeking declaration of title in respect of the suit properties, which the petitioners claim to be the joint family properties in which they do have a right to share, the decree that may be obtained behind their back will provide a hurdle for them in their suit for partition and also would cause multiplicity of proceeding. It is his further contention that when the respondent became aware of the fact that the petitioners staked claim in respect of the suit properties, while amending the plaint for including the prayer for declaration, the first respondent/plaintiff ought to have made the petitioners also as party defendants as they are the interested persons in resisting such a claim; that the non-impleadment of the petitioners will even cause the suit bad for non-joinder of necessary parties and that even if a decree is obtained by the first respondent, without the petitioners being made as parties to the suit, the same will pave way for further litigation as the petitioners can

claim the decree to be not binding on them as they are not parties to the suit. It is also the contention of the learned counsel for the petitioner that the learned trial Judge, went beyond the scope of the consideration in the application and made an observation regarding the merits of the case to the effect that the petitioners' claim is barred by limitation as they do not have chosen to file the suit within three years after their attaining majority for setting aside the sales made by the second respondent. According to the submissions made by Mr.N.Manokaran, learned counsel for the petitioners, the said observation is quite unwarranted and outside the scope of consideration in the application for impleadment.

5. Per contra, it is the contention of Mr.S.Vinoth Kumar, learned counsel for the first respondent that the suit came to be filed in 2010 itself and it was originally numbered as O.S.No.65 of 2010 on the file of the learned District Munsif, Tiruppur; that only after the amendment including the prayer for declaration was made, the value of the suit got increased and it was transferred on the question of jurisdiction to the Court of the II Additional District Judge, Tiruppur and re-numbered as O.S.No.142 of 2014.

6. The learned counsel for the respondent has made a meek attempt to support the observations made by the learned trial Judge for arriving at a conclusion that the impleading petition filed by the petitioners herein was not bonafide and it was pursuant to a collusion between the petitioners and the second respondent. Of course, the very fact that the second respondent remained ex parte in the suit filed by the petitioners herein for partition and he remains ex parte in the present Civil Revision Petition also may give rise to a suspicion that he is colluding with the petitioners herein or supporting the petitioners herein. But, that alone shall not be enough to dismiss the application filed by the petitioners herein for their impleadment. Since their title is at stake because of the amendment of the plaint by the first respondent including a prayer for declaration of his title, the petitioners are very much necessary parties and at least proper parties to be impleaded in the suit filed by the first respondent herein. The sale deeds executed by the second respondent herein were executed in individual capacity claiming himself to be the absolute owner of the suit properties. Hence, there will be no question of his son and daughter seeking cancellation of such a sale deed. If the sale deeds were executed on their behalf, then the question of the sons and daughters, who were minors, filing a suit for cancellation of the

documents will arise and the limitation will be three years from the date of their attaining majority. As it is a case of the petitioners that the suit properties are the joint family properties in which they got a right to share by birth and their shares were not alienated and also that alienation made by the second respondent will not bind their shares, they become very much necessary parties in the suit filed by the first respondent. In their absence, the suit itself will be viewed as one bad for non-joinder of necessary parties. The above said observation has been made only in order to show that the learned trial Judge has transgressed the limits and made an observation regarding the merits of the main case in the application filed for impleadment itself.

7. In view of the forgoing discussions, this Court is of the view that the impugned order of the trial Court cannot stand the scrutiny of this Court and it has been passed without properly exercising the jurisdiction conferred on the trial Court, making the order correctable by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India.

In the result, the revision succeeds and the same is allowed. The order of the trial Court dated 23.12.2014 made in I.A.No.1892 of 2014 in O.S.No.142 of 2014 is set aside. I.A.No.1892 of 2014 shall stand allowed and the petitioners therein are impleaded as defendants and ranked as defendants 2 and 3 in the above said original suit. No costs. Consequently, the connected miscellaneous petition is closed.

04.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Principal District Munsif
Villupuram, Villupuram District

P.R.SHIVAKUMAR.J.,

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