

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.219/2016

1.Kanikaimary @ Pappakannu

2.Mary

3.Josephine : Petitioners

versus

1.Mariadoss

2.Peter

3.Gracy

4.Rajan

5.Pushpa : Respondents

PRAYER: Revision filed against the order dated 30.11.2015, in I.A.No.4004 of 2014 in O.S.No.6043 of 2009 on the file of the II Assistant City Civil Court, Chennai.

For petitioner : Mr.C.Vetrivel

For respondent : Mrs.G.Sumithra
for M/s.V.M.Abdul Maseed

ORDER

The petitioner filed a suit for partition in O.S.No.6043 of 2009. In the said suit, the respondents filed written statement wherein respondents 1 to 3 have taken up a contention that even during the life time of their father, the property was sold in favour of respondents 4 and 5 herein. The

petitioners thereafter filed an application for impleading in I.A.No.4004 of 2014. The application was dismissed by the Trial Court with an observation that within a reasonable time after filing written statement, the petition for impleading was not filed. Feeling aggrieved, the petitioners are before this Court.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. The petitioners filed a suit for partition. The suit was contested by respondents 1 to 3 by contenting that their father has already sold the property to respondents 4 and 5 herein and as such, there is no question of partition. It was only under circumstances, the petitioners filed the application in I.A.No.4004 of 2014 to implead the respondents 4 and 5 as parties. The Trial Court dismissed the application primarily on the ground that within a reasonable time, after filing the written statement, the application was not filed. The petitioners seek a decree of partition. The decree passed in a suit for partition would bind even the subsequent purchasers. Such being the position, the petitioners were justified in filing the application to implead the purchasers as parties to the civil suit. I am therefore not in a position to support the order passed by the learned trial Judge.

4. In the result, the order dated 30.11.2015 is set aside. The interlocutory application in I.A.No.4004 of 2014 is allowed.

5. The civil revision petition is allowed as indicated above. No costs. Consequently, C.M.P.No.1092 of 2016 is closed.

02.11.2016

Index:Yes/no
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To
The II Assistant City Civil Court, Chennai.

K.K.SASIDHARAN, J.

(tar)

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