

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2016

Pronounced on : 20.12.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP(PD)No.2129 of 2013
and
M.P.No.1 of 2013**

1.N.Govindammal
2.P.Kalaiselvi
3.P.Nalliappan @ Nalliappa Gounder .. Petitioners

Vs.

1.M.A.Thiagarajan
2.N.Asokan
3.A.Jayalakshmi
4.The Joint Sub-Registrar III,
Salem South, Salem. ..
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.03.2013 passed by the Principal District Munsif, Salem in I.A.No.308 of 2012 in O.S.No.1091 of 2008.

For Petitioners	: Mr.N.Anand
For Respondents	: Mr.P.Jagadeesan (for R1)
	M/s.I.C.Vasudevan (for R2)
	M/s.R.Nalliappan (for R3)
	No Appearance (for R4)

ORDER

The plaintiffs are the revision petitioners before this Court, challenging the order passed in I.A.No.308 of 2012 in O.S.No.1091 of 2008 dated 14.03.2013, on the file of the Principal District Munsif Court, Salem.

2. The case of the plaintiffs is that they filed the suit against the defendants 4 to 6 for declaration declaring the plaintiffs 1 and 2 are entitled the suit property as per the settlement deed dated 20.02.2006, registered as Doc.No.311 of 2006 with the third defendant consequentially for permanent injunction restraining the defendants 1 and 2 from in any way disturbing and interfering the peaceful possession and enjoyment of the suit property. Pending suit, the first respondent/proposed party Mr.M.A.Thiagarajan has filed I.A.No.308 of 2012 in O.S.No.1091 of 2008 under Order 1 Rule 10(2)

read with Section 151 of C.P.C. with a prayer to implead the petitioner/3rd party as 4th defendant in the suit to avoid multiplicity of proceedings.

3.The case of the first respondent/proposed party is that the suit schedule mentioned properties and other parts of the properties originally belongs to one Vellaiya boyan and the said Vellaiya boyan's legal heirs are Rajan boyan and Rathinam ammal being his son and daughter along with his wife Veerammal. The said Vellaiya boyan's son namely Raja boyan was in possession and enjoyment of the Vellaiya boyan's properties being his only son.

4. The first respondent/proposed party also states that his father namely Arumugam was also running a sago factory in his lands in S.No.159/21 and 159/22. As a matter of fact, the suit properties and other parts of the property in S.No.159/8 and in S.No.159/24 to an extent of 1.02 acres vacant land has been used as storage land of Tapioca's waste water in compliance of the then pollution controller from the year 1979. The said Arumugam has also obtained proper consent of adjacent land owners inclusive of the land owner in S.No.159/8 and 159/24 for storage of the effluent water. The then

land owners of S.No.159/8 i.e. part of the suit property and S.No.159/24 namely Raja boyan and his mother Veerammal wife of Vellaiya boyan and thus the plaintiff's family was let into possession of the suit property and the same was under possession of the first respondent/proposed party's father and petitioner till date.

5.The first respondent/proposed party also states that when the first respondent/proposed party father's possession and enjoyment of the suit properties was disturbed by the said Raja boyan and his family, his father was filed a Civil Suit in O.S.No.256 of 1985 for the relief of permanent injunction against their family's flow of waste water into the suit properties and the same was decreed on 10.04.1985 and the injunction is still in force. Till the death of the first respondent/ proposed party's father, he was in possession and enjoyment of the same, as the absolute owner to the knowledge of one and all of the whole world. The said Arumugam died on 08.11.1992 and thereafter, the suit property fell into the first respondent/proposed party safe under the family arrangements and he is now in continuous open exclusive and constructive possession of the suit property as of an absolute owner on prescription of adverse title for more than statutory period and his title to the suit properties has been perfected by his adverse possession. After coming to know

about the pendency of the suit proceedings through the first respondent/proposed party's well wishers, the respondents/plaintiffs are having any tangible rights over the suit property and their claims are not bonafide were filed the suit. In order to safeguard his rights, title and possession of the suit properties is bound to take part in the above suit proceedings pending in O.S.No.1091 of 2008, since he is necessary and proper party to adjudicate controversies and his claim in proper perspective and to avoid multiplicity of proceedings of law, he has filed the above application for impleading the 4th defendant in the suit and prayed the Court below to allow the said application by impleading him as 4th defendant in the suit.

6. A counter affidavit has been filed by the respondents 2 and 3 / defendants 1 and 2. They denied all the allegations set out by the proposed party is false one. The respondents 2 to 4 also states that on the instigation and guidance of the defendants 1 and 2, to abuse the process of law, has filed the above application for impleading him as a 4th defendant. The respondents 2 to 4 / plaintiffs were denied the decision of the proposed party, but he has stated that they are in enjoyment of the suit schedule of properties.

7. Apart from this, the defendants 1 and 2, who are the

respondents 4 and 5 in their counter statement denied the allegations of the proposed party and the petition has been filed only on the instigation of the plaintiffs and the proposed party has no title rights and possession over the suit properties and hence they prayed for dismissal of the petition in I.A.No.308 of 2012.

8. Considering both side arguments, the learned Principal District Munsif, Salem, by order dated 14.03.2013 allowed the application in I.A.No.308 of 2012 on the ground that in order to prove the allegations, the first respondent/proposed party has produced a receipt dated 09.03.1984, certified copy of the judgment and decree in O.S.No.256 of 1985 and the original sale deed dated 20.09.1966 stands in the name of Veerammal, the said documents have been marked as Exhibits P1 to P3, the first respondent/proposed party should be added as party defendant.

9. The learned Judge also states that though the plaintiffs have filed the suit for declaration and for permanent injunction, the trial Court on the opinion that the presence of the proposed party is very much necessary for proper adjudication of this case and it will also avoid multiplicity of proceedings. Therefore, on the above ground, the learned Judge allowed the application and to direct the first

respondent/proposed party to implead him as a 4th defendant in the suit. Challenging the said order, the plaintiffs 1 to 3 has approached this Court and filed the the Civil Revision Petition.

10. Heard Mr.N.Anand, learned counsel appearing for the petitioner and Mr.P.Jagadeesan, learned counsel appearing for the first respondent, Mr.I.C.Vasudevan, learned counsel appearing for the second respondent and Mr.R.Nalliappan, learned counsel appearing for the third respondent and perused the records.

11. I have gone through the affidavit filed by the first respondent/proposed party in I.A.No.308 of 2012. The case of the first respondent/ proposed party is that the suit schedule of properties belongs to one Vellaiya boyan and after the death of Vellaiya boyan, his son namely Raja boyan was in possession and enjoyment of the suit schedule of properties. The proposed party's father namely Arumugam was running a sago factory in his lands in S.No.159/21 and 159/22 and he has also stated that as a matter of fact that the suit properties and other parts of the properties in S.No.159/8 and 159/24 with an extent of 1.02 acres vacant land has been used as storage of Tapioca's waste water in compliance of the

then pollution controller from the year 1979. The proposed party also states that his father had also obtained proper consent of adjacent land owners inclusive of the land owner in S.No.159/8 and 159/24 for storage of the effluent water. Therefore, the suit properties was under possession and enjoyment of the proposed party's father and after the death of Arumugham being his son the proposed party herein is in possession and enjoyment of the properties. While the proposed party's father was alive, a suit was filed in O.S.No.256 of 1985 against the said Raja boyan and the suit was decreed on 10.04.1985 and the same is in force till date. After the death of Arumugam on 08.11.1992, the proposed party was in continuous open exclusive and constructive possession of the suit property as of an absolute owner on prescription of adverse title for more than statutory period and his title to the suit properties has been perfected by his adverse possession. The affidavit of the first respondent/proposed party stated that is as follows:-

"I submit that till my father's death, he was in possession and enjoyment of suit property herein as the absolute owner to the knowledge of one and all of the whole world. My father died on 8.11.1992 and thereafter, the suit property herein fell into my safe

under a family arrangement and I am now in continuous open exclusive and constructive possession of the suit property as of a absolute owner on prescription of adverse title for more than statutory period and my title to the suit properties has been perfected by my adverse possession.”

12. On fair reading of the affidavit, it is made clear that the first respondent/proposed party has claimed the properties an adverse possession and if it is the case of the proposed party under the Adverse possession, he should file a separate suit for adverse possession against the original owner namely the vendors of the plaintiffs.

13. The learned Judge has failed to note that originally the present suit in O.S.No.1091 of 2008 filed by the plaintiffs for declaration, declaring the title of the plaintiffs and also for permanent injunction. Thus being the case, a third party filed the impleading petition claiming his ownership under the adverse possession of the suit schedule of property to impleading him as a party in the suit property, without filing separate suit for claiming the ownership of the suit schedule of property by way of an adverse possession and

the petition is not maintainable since his title is yet to be declared on the ground of adverse possession. When the first respondent/proposed party has claimed his right over the suit schedule of property under the adverse possession, he might have approach the competent Court and to file separate suit for declaration against the original owner for claiming the title over the suit schedule of property.

14.The suit has been filed by the plaintiffs on the ground that the settlement deed was executed by the third plaintiff namely P.Nalliyappan @ Nalliappa Gounder in favour of the plaintiffs 1 and 2 and registered the document on the file of the third defendant in Doc.No.311 of 2006 and handed over the possession of the property to them and after execution of the settlement deed, the plaintiffs 1 and 2 were mutated the document by way of changing the patta, chitta and other revenue records in their names.

15.The claim of the plaintiffs are that originally one Veerammal wife of Vellaiya boyan was executed a sale deed on 08.04.1985 in favour of the third plaintiff P.Nalliyappan @ Nalliyappa Gounder and since the date of purchase of the property, the third plaintiff alone is enjoying the property in his own right as owner thereof.

Subsequently, the third plaintiff has sold the land of 2224 sq. ft. to one Pappa, R.Mani and others on 14.06.1995 and the balance of 28 cents, which is the suit schedule of property being enjoyed by the third plaintiff and he only enjoyed in the agricultural land. The third plaintiff's wife and mother of the plaintiffs 1 and 2 namely Kuruvaiaammal died in the year 1991 and thereafter the third plaintiff started living in Polampatti Village in Edapadi Taluk and the plaintiffs 1 and 2 are married and settled down in Salem with their families. Thereafter, the third plaintiff has executed a settlement deed in respect of the suit schedule of property in favour of the plaintiffs 1 and 2 on 20.02.2006 and registered as Doc.No.311 of 2006, on the file of the third defendant Sub-Registrar namely the Joint Sub-Registrar, Sub Registrar Office, Salem and handed over the possession to the plaintiffs 1 and 2.

16.Thus being the case, this first respondent/proposed party have no right to implead himself in the above suit as a 4th defendant by claiming the suit schedule of property under the adverse possession. If at all the first respondent/proposed party have any claim over the suit schedule of property for declaration declaring the title of the suit schedule of property under the adverse possession, he should only approach the competent Civil Court and file a separate

suit for claiming the title and he has no right to implead in this suit, since the plaintiffs 1 and 2 and the third defendants are the subsequent purchaser and the subsequent title owner. Therefore, the very order of learned Principal District Munsif, Salem is warranting interference by this Court. Accordingly, the order in I.A.No.308 of 2012 is liable to be set aside by allowing the Civil Revision Petition.

17.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order in I.A.No.308 of 2012 in O.S.No.1091 of 2008, dated 14.03.2013, on the file of the Principal District Munsif, Salem.

(b) the trial Court is hereby directed to dispose the suit in O.S.No.1091 of 2008, since the suit is of the year 2008, within a period of three months from the date of receipt of a copy of this order, on day today basis without giving any adjournment and both the parties are hereby directed to co-operate for early disposal of the suit.

18. Accordingly, this civil revision petition is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

20.12.2016

Index:Yes
Internet:Yes

vs

To

The Principal District Munsif,
Salem.

M.V.MURALIDARAN, J.

VS

Pre-Delivery order made in
CRP(PD)No.2129 of 2013
and
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