

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.12.2016**

CORAM:

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

C.R.P.(P.D.) No.3800 of 2016 and
CMP.No.19418 of 2016

1.K.K.Venugopal
2.K.S.Palani
3.Pattabi

...Petitioners

versus

1.M.Sanjeevi

2.The District Collector of Tiruvallur District
Having his Office at Collectorate,
Tiruvallur Town and Taluk.

3.The Revenue Divisional Officer at
Tiruttani, having office at Tiruttani Town and Post,
Tiruvallur District.

4.The Tahsildar of Pallipattu Taluk,
Having its office at Pallipattu and Post,
Pallipattu Taluk,
Tiruvallur District.

5.Deisi
6.Niranjini

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.239 of 2016 in O.S.No.90 of 2012 on the file of the learned District Munsif cum Judicial Magistrate, Pallipattu.

For Petitioners : Mr.G.Jeremiah

For Respondents : Mr.P.Ranganatha Reddy for R1

COMMON ORDER

The petitioners filed a suit for declaration of title and consequential injunction in O.S.No.90 of 2012, before the learned District Munsif, Pallipattu. The suit was contested by the first respondent by filing written statement, wherein, a contention was taken that the suit is bad for non-joinder of necessary parties, in view of non-impleading of the legal heirs of Thiru.Sekar, who is none other than the brother of the second petitioner herein.

2. The parties thereafter proceeded with the trial.

3.The petitioners after posting the matter for judgment filed two interlocutory applications in I.A.Nos.238 and 239 of 2016 to reopen the matter and to implead respondents 5 and 6 herein as parties to the suit.

4. The learned Trial Judge dismissed the applications primarily on the ground that efforts were not taken by the petitioners earlier to implead the respondents 5 and 6 as parties, notwithstanding the contention taken by the first respondent in his written statement filed

on 31 August 2012. The order is under challenge in this civil revision petition.

5. The learned counsel for the petitioners contended that both in the plaint filed in O.S.No.90 of 2012 and in the written statement filed by the first respondent, there is a reference with regard to the right of Thiru.Sekar, who is none other than the brother of second petitioner. According to the learned counsel, it was only at a later point of time, the petitioners realised the mistake in non-impleading the legal heirs of Sekar and as such, the applications were filed.

6. The learned counsel for the first respondent contended that the petitioners have been dragging the matter under one pretext or the other. The first respondent is aged about 85 years. The Trial Court kept the matter pending from 2012 onwards. It was only after posting the matter for judgment, the petitioners have filed the applications for re-opening and impleading and as such, the Trial Court was perfectly correct in dismissing the applications.

7. The petitioners filed the suit for declaration and other reliefs. In the plaint in O.S.No.90 of 2012, the petitioners have disclosed the fact that Sekar, who is the brother of the second petitioner is also having a share. Sekar died leaving behind his wife and daughter as legal heirs, who are respondents 5 and 6 in the revision petition.

8. The written statement filed by the first respondent contained a statement to the effect that suit is bad for non-joinder of necessary parties.

9. It is true that the petitioners have not taken earnest efforts at the earliest point of time to implead the legal representatives of Sekar. However, the fact remains that those legal representatives are also entitled to the property. Such being the position, the Trial Court was not correct in dismissing the applications, merely on account of the fact that the suit is posted for arguments. I am therefore of the view that the impugned order is liable to be set aside.

10. The order impugned in this civil revision petition is set aside. The interlocutory applications are allowed.

11. The learned District Munsif cum Judicial Magistrate, Pallipattu,

is directed to implead the respondents 5 and 6 as parties to the Civil Suit. The newly impleaded parties should be given 30 days' time to file written statement. There is no need for an additional issue to be framed, in view of the fact that there is no dispute with regard to the share. Similarly, there is no need to reopen the evidence of either the petitioners or the first defendant. In case, the newly impleaded parties wanted to adduce evidence on their side, reasonable opportunity should be given.

12. The learned Trial Judge is directed to ensure that unnecessary adjournments are not given either to the petitioners or to the first respondent. There shall be a further direction to dispose of the suit as expeditiously as possible, and in any case, on or before 31 March 2017.

13. The Civil Revision Petitions is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2016

Index : Yes/No

Note : Issue order copy by 07.12.2016

SVKI

K.K.SASIDHARAN, J.

(svki)

To

The District Munsif cum Judicial Magistrate,
Pallipattu.

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