

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(NPD)No.4057 of 2009

and

M.P.No.1 of 2009

1.Sarojini
2.Naveenkumar
3.Minor.Subash Chandras Bose
4.Minor.Priyadharshini alias Mythili
Rep. by their mother and guardian
the first petitioner (Sarojini)

..Petitioners/3rd parties

Vs.

Marimuthu

..Respondent/Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order of rejection in I.A.No.Unnumbered of 2009 in O.S.No.146 of 2005 dated 07.08.2009 passed by the learned Additional Subordinate Judge, Virudhachalam.

For Petitioners : Mr.B.Sundarapandian

For Respondent : Ms.R.Sripriya
for Mr.V.Raghavachari

ORDER

The Civil Revision Petition arises against the order of rejection passed in I.A.No.Unnumbered of 2009 in O.S.No.146 of 2005 dated 07.08.2009 by the learned Additional Subordinate Judge, Virudhachalam.

2. The respondent herein/plaintiff filed a suit in O.S.No.146 of 2005 praying for specific performance. Even before service of summons

on the defendants in the suit, an ex-parte decree was passed on 15.04.2008 .

3. The first defendant/Appusamy died. The First revision petitioner is the wife of Chinnayan, who is the second defendant in the suit and petitioners 2 to 4 are the children of Chinnayan.

4. According to the learned counsel for the petitioners, the husband of the first petitioner viz., Chinnayan/second defendant was missing from 01.11.2005. Since the second defendant's whereabouts were not known to the first petitioner, she had given a complaint to the police on 15.11.2005 and filed a petition before the Hon'ble Home Secretary on 23.11.2005 to trace out her husband and the same was forwarded to the concerned police station. In spite of all the above said steps, he was not traceable. At this stage, the said suit was decreed ex-parte on 15.04.2008.

5. Further, according to the learned counsel for the petitioners, the first petitioner/wife of Chinnayan and petitioners 2 to 4/ children of the Chinnayan are entitled to get a share in the suit schedule property, since the suit schedule property is an ancestral property and the petitioners are necessary parties to the suit. However, the unnumbered application filed by the petitioners 1 to 4 to implead themselves as parties to the suit was rejected as not maintainable. Aggrieved against the order passed by the trial Court on 07.08.2009, the present civil revision petition

is filed before this Court.

6. Heard Mr.B.Sundarapandian, learned counsel appearing for the petitioners and Ms.R.Sripriya, learned counsel appearing for the respondent.

7. Learned counsel for the petitioners submitted that the first petitioner has filed a Habeas Corpus Petition in HCP.No.563 of 2009 before this Court, seeking a direction directing respondents 1 and 2 to produce the body of the detenu, by name Chinnayan/petitioner's husband, from the illegal custody of the respondents 3 to 7 therein and their associates, before this Court and set him at liberty.

8. The learned counsel for the respondents submitted that the third respondent in HCP, filed a counter affidavit stating that Chinnayan received a sum of Rs.50,000/- as advance in connection with an agreement of sale and subsequently, he failed to execute the sale deed, for which, the sixth respondent herein filed Original Suit in O.S.No.146/2005 and the same was decreed ex parte. The detenu filed a petition to set aside the ex parte decree and he also appeared before the Court. Hence, this Court, observed that the petitioner, with a view to defeat the interest of the sixth respondent, had filed the HCP, as if the petitioner's husband was missing ever since 2005. Since the Police was also investigating the matter in connection with Cr.No.105/2009, the above said HCP was dismissed.

9. Considering the above said facts and circumstances of the case and the fact that the second defendant/Chinnaiyan is still not traceable, the impugned order in unnumbered I.A.No. /2009 in O.S.No.146 of 2005 dated 07.08.2009 passed by the Sub Court, Virudhachalam in set aside and the trial court is directed to number the unnumbered I.A in O.S.No.146 of 2005 forthwith and dispose of the I.A. on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity to the parties concerned.

The Civil Revision Petition is allowed with the above observation.
No costs. Consequently, connected miscellaneous petition is closed.

Gv

28.04.2016

Index :Yes/No
Internet:Yes/No

To

The learned Additional Subordinate Judge,
Virudhachalam.

D.KRISHNAKUMAR,J.

Gv

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