

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2016

CORAM :

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.417 of 2016

- 1.Muthukrishan
S/o.Ganesa Mudaliyar
No.10, R.P.Koil Street,
Pudupalayam,
Cuddalore.
- 2.Pandurangan
S/o. Ganesa Mudaliyar
Judge Bungalow Street,
Cuddalore.
- 3.Gunasekaran
S/o.Ganesa Mudaliyar
Ramadoss Road,
Cuddalore.
- 4.Sudakhar
S/o.Sivasankaran
No.41, Angalamman Koil Street,
Cuddalore.
- 5.Siddarthan
S/o.Krishnasamy
Pudupalayam Main Road,
Cuddalore.
- 6.Thangapazham
S/o.Krishnasamy
Pudupalayam Main Road,
Cuddalore.

R.Ramamurthy

... Petitioners

Vs

Janarthanan (died)

1. Prabakaran,
S/o. Sivasankara Mudaliyar
Angalamman Koil Street,
Vannarapalayam, Cuddalore – 1.
2. Premkumar,
S/o. Sivasankara Mudaliyar
Angalamman Koil Street,
Vannarapalayam, Cuddalore – 1.
3. Sathishkumar
S/o. Sivasankara Mudaliyar
No.12, L.I.G. Quarters
Anna Nagar, Cuddalore.
4. Devanathan
S/o. Lakshmi Reddiar
Reddy Street,
Vellapakkam, Cuddalore Taluk.
5. Prabavathi
W/o. Prabakaran
Angalamman Koil Street,
Vannarapalayam, Cuddalore-1.
6. Selvam
S/o. Shanmugam
No.45, Vellimottan Street,
Tiruppathiripuliyur, Cuddalore-2.
7. Uma Maheswari
W/o. Balakrishnan
No.12, Ramadoss Street
Pudupalayam, Cuddalore.
8. The District Collector,
Manjakuppam, Cuddalore.
9. The Sub Registrar
Manjakuppam, Cuddalore.

10.The Commissioner
Cuddalore Municipality
Cuddalore.

11.The Thasildhar
Beach Road, Cuddalore.

12.The Assistant Engineer (Town)
TANGEDCO
River Side Street
Pudupalayam, Cuddalore.

13.Raja @ Govindaraj
S/o.Ramamoorthy
Muslim Street
Pudupalayam, Cuddalore.

14.The Sub Registrar
Nellikuppam
Cuddalore District.

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution on India praying to set aside the Docket Order in I.A.No..... /2016 (19 Register No.44/2016) in O.S.No.92/2004 dated 20.1.2016 on the file of the Principal District Munsif, Cuddalore, and thereby allow the revision.

For Petitioner : Mr.N.Suresh

ORDER

The Civil Revision Petition has been filed by the revision petitioners/plaintiffs seeking to set aside the Docket Order in I.A.No.Nil /2016 (19 Register No.44/2016) in O.S.No.92/2004 dated 20.1.2016 on the file of the Principal District Munsif, Cuddalore.

1.1. The plaintiffs in O.S.No.92 of 2004 has filed a suit for

declaration that the decree of declaration granted in O.S.No.225 of 2003 on the file of the I Additional Sub Court, Cuddalore, for the sale of the Trust property is null and void, and also for the relief of declaration that the two sale deeds dated 12.12.2003 effected by the first defendant in favour of the sixth defendant and seventh defendant respectively are void and for recovery of possession.

2. The relief sought for is not only against the first defendant but as well as against the other defendants also.

3. During the pendency of the suit, the first defendant was reported dead on 08.01.2006. Thereafter, an application has been taken out in I.A.No.32 of 2012, seeking the impleadment of the legal representatives of the deceased first defendant. This application has been filed along with an application to condone the delay of 1889 days and the said application was dismissed on 12.09.2015 on the ground that there are no materials to show that the proposed parties are the legal representatives of the deceased first defendant and also that there were no sufficient reasons adduced for the belated filing of the impleading application.

4. Subsequent to the dismissal of the suit, application has been filed for restoration of the suit and this application has been filed quoting Sections 151 as well as Section 152 of C.P.C., The Court has passed an

order stating that only in respect of clerical error, Section 152 of C.P.C., can resorted to, and not in respect of a petition seeking restoration of the suit.

5. The fact remains that even though the suit is dismissed as against the first defendant, there are other defendants namely defendants 9 to 15. The perusal of the application would go to show that relief sought for is the restoration of the suit as against all the defendants.

6. Under such circumstances, the Court below should have considered the petition for restoration of suit as against the defendants 9 to 15. It appears that the Court did not go into that aspect at all. Therefore, the order passed by the Court below with regard to dismissal of the suit is liable to be set aside. The Court below is directed to consider the restoration of the suit as against the defendants 9 to 15 and to pass appropriate orders.

7. Accordingly, this Civil Revision Petition is allowed. No costs.

16.02.2016

ds

To:

The Principal District Munsif Court
Cuddalore.

S.VIMALA ,J.,

ds

CRP (NPD) No.417 of 2016

16.02.2016