

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.665 of 2016

&

C.M.P.No.3423 of 2016

1.Rajammal
2.Palaniammal
3.Kuppayi

... Petitioners

vs.

1.Palanimuthu @ Chinnappan
2.P.Mani
3.M.Anandan
4.M.Selvam
5.M.Madhaiyan
6.K.Subramani
7.Sambavammal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A.No.295 of 2014 in O.S.No.43 of 2010 dated 05.10.2015 passed by the Subordinate Court, Mettur.

For Petitioners : Mrs.S.Jayakumar

ORDER

This revision has been filed under Article 227 of the Constitution of India challenging the order of the trial Court dated 05.10.2015 made in

I.A.No.295 of 2014 in O.S.No.43 of 2010 on the file of the Sub-Court, Mettur.

2. Four persons joining together as plaintiffs filed the said suit against six persons arraying them as defendants. The suit is one for partition and separate possession. The sixth defendant in the said suit, namely K.Subramani and one Saroja jointly filed a suit against the plaintiffs in O.S.No.43 of 2010 as O.S.No.127 of 2011 on the file of the District Munsif Court, Mettur. Similarly, Rajammal, Palaniammal and Kuppayi (Plaintiffs 1, 3 and 4 in O.S.No.43 of 2010) filed another suit in O.S.No.125 of 2011 on the file of the District Munsif, Mettur against K.Subramani, the sixth defendant in O.S.No.43 of 2010. Tr.O.P.No.195 of 2011 came to be filed before the Principal District Judge, Salem for the transfer of those cases to one and the same Court for the purpose of conducting joint trial. The said petition was dismissed on 10.02.2012. A revision came to be filed against the order of the Principal District Judge and this Court, by order dated 29.10.2015, directed transfer of O.S.No.125 of 2011 and O.S.No.127 of 2011 from the file of the District Munsif, Mettur to the Sub-Court, Mettur for joint trial with O.S.No.43 of 2010. On such transfer, O.S.No.125 of 2011 was re-numbered as O.S.No.143 of 2013 and O.S.No.127 of 2011 was re-numbered as O.S.No.144 of 2013 on the file of the Sub-Court, Mettur. The High Court also issued a direction on 19.10.2012 for the joint trial of all the three cases and disposal of the same within 4 months thereafter. Under the said circumstances, I.A.No.295 of 2014 came to be filed when the cases stood

listed in the Special List for trial. The learned trial Judge dismissed the said petition by the impugned order dated 15.10.2015. It is as against the said order, the present Civil Revision Petition came to be filed.

3. This court heard the submissions made by Mr.S.Jayakumar, learned counsel for the petitioners and perused the copy of the impugned order and other documents produced in the form of typed-set of papers.

4. The main reason assigned by the petitioners in the revision seeking transposition of Sambavammal as a defendant in O.S.No.43 is that when the revision petitioners wanted her to join in filing O.S.No.125 of 2011 on the file of the District Munsif Court, Mettur, which has been re-numbered as O.S.No.143 of 2013 on transfer to the Sub-Court, Mettur, Sambavammal refused to join them, whereupon the revision petitioners felt it inconvenient to conduct the trial of the cases keeping her as one of the co-plaintiffs in the said suit. The said contention was resisted by the only contesting respondent, namely the sixth respondent K.Subramnai, who denied the averments made in the supporting affidavit. On the other hand, he contended that Sambavammal left the house of the revision petitioners 15 years ago and the suit came to be filed by the revision petitioners in her name also forging her signature. Such a contention was also raised by him in his written statement. The written statement came to be filed in April 2010 itself. Thereafter, the petitioners waited for four years and filed I.A.No.295

of 2014 for the transposition of Sambavammal as a defendant.

5. Regarding the refusal of Sambavammal to co-operate with the revision petitioners in conducting the trial, the supporting affidavit recites that at the time of filing of O.S.No.125 of 2011 on the file of District Munsif Court, Mettur, which has been re-numbered as O.S.No.143 of 2013 on its transfer to the Sub-Court, Mettur, Sambavammal did not come forward to join with them in filing the suit. If it was so, the petitioners could have filed the petition for her transposition then and there itself. They would not have waited for three more years, that too, after a direction was issued by this Court in 2012 itself to dispose of the suit within four months. On the other hand, the said petition came to be filed when the cases were listed for trial in the Special List. Hence, the reason assigned by the trial Court to the effect that it was a ruse to prolong the case cannot be said to be either infirm or defective.

6. The further reason assigned by the trial Court is that the defence plea by the sixth defendant that the plaint itself has been filed with the forged signature of Sambavammal is sought to be get over by seeking her transposition as defendant, whereupon she may not appear as it is revealed from the fact that in the transposition petition itself she remains ex parte, also cannot be discountenanced. However, the learned trial Judge could have refrained from making any observation regarding the burden of proof of

the said allegation in the petition. The learned trial Judge also ought not to have made an observation that the averment made in the counter remains unchallenged. That part of the order is quite unwarranted. Simply because such unwarranted observations are made, it shall not be in the interest of justice to interfere with the final order passed by the trial Court, which can be sustained on the other grounds, namely belatedness and an attempt to escape from the accusation made by the sixth respondent that the signature of Sambavammal found in the plaint is forged. While deciding to confirm the said order on the above said reasons alone, this Court deems it appropriate to expunge the observations made by the trial Court to the effect that the allegations of forgery and the allegation that Sambavammal has disappeared 15 years ago remain unchallenged.

Accordingly, the Civil Revision Petition is dismissed. The observation indicated above, found in the order of the trial Court, shall stand expunged. The trial Court shall proceed with the trial and decide the issues without being influenced by any of the observations made in this order. No costs. Consequently, the connected miscellaneous petition is closed.

02.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Subordinate Court
Mettur

P.R.SHIVAKUMAR.J.,

gpa

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