

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.12.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMANIAM**

C.R.P.(P.D.) No.831 of 2013 &
M.P.No.1 of 2013

1.K.Chandrapiraba

2.K.Banuchandar

... Petitioners

Vs.

1.R.Kanagaraj

2.Azhagan

3.Bathraian

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 27.09.2012 in I.A.No.58 of 2012 in O.S.No.282 of 2010 on the file of the IV Additional District Judge of Erode at Bhavani.

For Petitioners : Mr.V.S.Kesavan

For R1 : No appearance

For RR2 & 3 : Mr.G.Gokul

ORDER

This Civil Revision Petition is filed to set aside the fair and final order dated 27.09.2012 in I.A.No.58 of 2012 in O.S.No.282 of 2010 passed by the IV Additional District Judge, Erode at Bhavani.

2.The petitioners herein are the plaintiffs in the Suit and the Suit is for partition and separate possession. The petitioners found that during the pendency of the Suit, some of the suit scheduled properties had been sold by the co-owners (R2 & R3), who are all not parties to the Suit. Therefore, the petitioners filed an Interlocutory Application in I.A.No.39 of 2011 to implead the third party purchasers as defendants in the Suit. The trial Court allowed I.A.No.39 of 2011, seeking impleadment on 14.03.2012 and consequent on the allowing of I.A.No.39 of 2011, the petitioners/plaintiffs filed I.A.No.58 of 2012, for amending the cause title in the Plaint.

3.The learned counsel appearing for the petitioners contended that the prayer sought for in I.A.No.58 of 2012, is a consequential relief and in view of the fact that I.A.No.39 of 2011 was allowed, it is necessary to amend the cause title in the Plaint. However, the

trial Court without considering the consequential relief sought for by the petitioners, dismissed the said Application. Aggrieved over the same, the petitioners have preferred the present Civil Revision Petition.

4.The learned counsel appearing for the respondents opposed the Application by contending that there was a suppression of fact by the petitioners in the Application and as it was an *exparte* order, the trial Court found that there is a chance of filing an Application to set aside the *exparte* order and in the event of filing such an Application, the present Application will become unnecessary and on that ground dismissed the Application. Hence, it is submitted that no error has been committed by the trial Court in its order dated 27.09.2012 and therefore, the present Civil Revision Petition has to be dismissed.

5.Considering the rival contentions raised both by the petitioners and the respondents, this Court is of the view that the trial Court has proceeded on presumptions and assumptions and no Court can decide the issue based on the future possible events and all the Courts are required to decide the issues based on the evidence and materials available before the Court. In the case on hand, the trial Court made a presumptive observation, which may

or may not happen. Hence, the findings of the trial Court is perverse and the Courts cannot act based on future events and based on the future conduct of the parties.

6. Accordingly, the Civil Revision Petition is allowed and the order passed in I.A.No.58 of 2012 is set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

09.12.2016

Index : Yes.
Internet : Yes.
rm/rpa

To

The IV Additional District Judge,
Erode at Bhavani.

S.M.SUBRAMANIAM,J.

Rm/rpa

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