



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(PD)(MD).No.2584 of 2016 and
CMP(MD).No.12212 of 2016

1.Shanthi
2.Saravanan
3.Rukumani
4.Chithra

: Petitioners

Vs.

Ganesan

: Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 20.09.2016 passed in I.A.No.228 of 2014 in O.S.No.368 of 2010 on the file of the Principal Subordinate Judge, Thanjavur.

For Petitioner : Mr. G. Karnan

O R D E R

This Civil Revision Petition is filed to set aside the order dated 20.09.2016 passed in I.A.No.228 of 2014 in O.S.No.368 of 2010 on the file of the Principal Subordinate Judge, Thanjavur.

2. The petitioners are the defendants 1,3,4 and 7. The respondent is the plaintiff in O.S.No.368 of 2010 on the file of the learned Principal Subordinate Judge, Thanjavur. The respondent filed O.S.No.368 of 2010 for declaration to declare the decree passed by the learned District Munsif, Thanjavur made in O.S.No.138 of 1997 is null and void. The petitioners filed I.A.No.228 of 2014 under Order 6 Rule 16(c) of CPC to strike of the plaint.

3. According to the petitioners, they filed O.S.No.138 of 1997 for partition and final decree was passed on 06.06.2011. In the final decree application, the respondent filed I.A.No.739 of 2007 for impleading him as party respondent in the final decree proceedings. The said Interlocutory Application was dismissed. After dismissal of the said application, the respondent filed O.S.No.368 of 2010 to declare the decree passed in O.S.No.138 of 1997 is null and void. The said suit is not maintainable.



4. The respondent filed counter affidavit and stated that property in O.S.No.138 of 1997 originally belonged to one Natesan Muthaliyar, who is the grand father of the defendants 1 to 3 and 7. The fourth defendant is the grand mother of the defendants and the deceased Rajappa is the husband of the fourth defendant and father of the defendants 5 and 6. The mother of the defendants 5 and 6 viz., Parvathiammal bequeathed the property to defendants 5 and 6. Their father filed suit in O.S.No. 408 of 1981 for permanent injunction on the file of the District Munsif Court, Thanjavur, challenging the Will executed by one Parvathiammal who was the mother of the respondents 5 and 6 / defendants 5 and 6. The said suit was dismissed, after full fledged trial.

5. Against that judgment and decree, the said Rajappa filed A.S.No.92 of 1984 which was also dismissed. The defendants 5 and 6 were in possession and enjoyment of the suit property. They sold the property by deed of sale dated 10.07.1996 to one Gomathi, W/o. Sekar. The respondent purchased the suit property from Gomathi, by the deed of sale dated 15.10.2004. The petitioners without impleading Gomathi, who was the owner from 10.07.1996 to 15.10.2004, filed O.S.No.138 of 1997 against the defendants 5 and 6 for partition. The defendants 5 and 6 did not contest the suit and therefore, ex parte preliminary decree was passed. Only at the time of inspection by the Advocate Commissioner appointed in the final decree proceedings, the respondent came to know about the suit and application for final decree. Immediately, he filed I.A.No.715 of 2010 and the said application was dismissed. Against the said order, the respondent filed Civil Revision Petition. The petitioners without impleading Gomathi who purchased the suit property from the defendants 5 and 6 filed suit in O.S.No.138 of 1997 for partition in collusion with other respondents and obtained collusive decree and therefore, prayed for dismissal of Interlocutory Application.

6. The learned Judge considering the materials on record and the averments made in the affidavit and counter affidavit and judgments relied on by the counsel for the petitioner dismissed the application.

7. Against the said order of dismissal, the present Civil Revision Petition has been filed.

8. The learned counsel for the petitioners submitted that the learned Judge erroneously dismissed the application on the ground that objection of the respondent was not heard before passing preliminary decree and final decree and the respondent is not a party to the earlier suit and the respondent was not heard before passing preliminary decree and final decree as his application to implead is dismissed. The respondent has no locus standi to challenge the decree passed in O.S.No.138 of 1997. The learned Judge erred in holding that the respondent was not party to the earlier suit in O.S.No.138 of 1997.



9. I have heard the learned counsel appearing for the petitioners and perused the materials available on record.

10. The respondent has stated in the plaint that the defendants 5 and 6 sold the property to one Gomathi by deed of sale dated 10.07.2010 and the petitioners did not implead the said Gomathi as party to the suit filed by them for partition. The defendants 5 and 6 who sold the property to said Gomathi did not contest the suit. According to the respondent, the petitioners and other defendants in O.S.No.138 of 1997 colluded together and obtained collusive decree. The respondent filed Interlocutory Application in the final decree to implead him as party as he purchased the property from Gomathi, the said application was dismissed. Further, the suit is of the year 2010, the petitioners have filed Interlocutory application in the year 2014, this issue can be decided only after considering the evidence let in by the parties at the time of trial. Now, the suit is ripe for trial.

11. The learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge, Thanjavur.

+ 1 CC TO Mr.G.KARNAN, ADVOCATE IN SR No. 82206

TRP

TE/PM : 14/03/2017 : 3P/3C

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