



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2016

CORAM :

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THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

C.R.P.(PD)No.451 of 2016
C.M.P.(MD) Nos.5456 of 2016
and 1944 of 2016

Irulappa Pillai

... Petitioner/2nd Respondent/
2nd defendant
Vs.

1.R.Vasumathi

2.D.Malathi

3.D.Uthalakumar

4.D.Sukumar

5.D.Baskar

..Respondents 1 to 5/Petitioners/
Plaintiffs

6.Ganapathia Pillai

7.M.Dhanasekaran

8.M.Jawaharlal

...Respondents 6 to 8/Respondents
3, 6 and 8/Defendants 3,6 and 8

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records relating to the docket order passed by learned Principal Sub Court, Madurai by exonerating this petitioner and the third respondent from the final decree proceedings on the basis of the Memo filed by the respondents 1 to 5/plaintiffs in I.A.No.1018 of 2014 in O.S.No.369 of 1979 dated 12.01.2016 and set aside the same.

For Petitioner : Mr.K.P.Narayanakumar

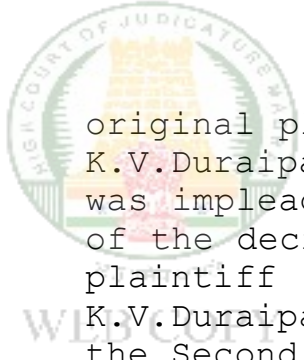
For Respondents : Mr.V.Maragathavel for RR 3to5

O R D E R

This revision arises out of the order dated 12.01.2016 passed in I.A.No.1018 of 2014 in O.S.No.369 of 1979 by the Principal Sub Court, Madurai.

2. Heard both sides and perused the records.

3. The brief facts of the case are that one Mayakaruppan Nadar filed the suit against his son Muniyappa Nadar and two others claiming partition and separate possession of half share in the suit properties. The defendants 2 and 3 are the purchasers of item Nos. 1 and 2 from the first defendant. Pending suit, the



original plaintiff Mayakaruppan Nadar executed a Will in favour of K.V.Duraipandi. After demise of Mayakaruppan Nadar, K.V.Duraipandi was impleaded as the second plaintiff. When the appeal arising out of the decree passed in O.S.No.369 of 1979 was pending, the second plaintiff K.V.Duraipandi also passed away. The legal heirs of K.V.Duraipandi were brought on record as the respondents 1 to 5 in the Second Appeal.

4. After dismissal of the Second Appeal, the respondents 1 to 5 filed I.A.No.1018 of 2014 for passing final decree. In the application, they filed a memo on 13.11.2014 to exonerate the original defendants 2 and 3 stating that they have no right over the suit properties. The memo was allowed by the trial court. Aggrieved over the order the present revision is filed.

5. Mr.K.P.Narayanakumar, learned counsel for the petitioners would submit that the defendants 2 and 3 have purchased items 1 and 2 of the suit properties from the first defendant. So they are necessary parties in the final decree application.

6. Mr.Maragathavel, learned counsel for the respondents would submit that the right claimed by the original defendants 2 and 3 were already negatived by the trial court, which was also confirmed by this Court. So they are not necessary parties in the final decree application. The learned counsel would further submit that without prejudice to the right of the plaintiffs, they are ready to withdraw the memo. A decree can be passed after giving opportunity to the defendants 2 and 3.

7. In view of the submission made by the learned counsel for the respondents, this revision is allowed and the docket order passed by learned Principal Sub Court, Madurai, exonerating the petitioner and the third respondent from the final decree proceedings in I.A.No.1018 of 2014 in O.S.No.369 of 1979 dated 12.01.2016, is set aside. Consequently, connected C.M.P.(MD) Nos.5456 of 2016 and 1944 of 2016 are closed.

8. Considering the fact that the suit was filed in the year 1979, the learned Principal Sub Judge, Madurai, shall dispose of the final decree application as expeditiously as possible preferably on or before 30.11.2016.

Sd/-

Assistant Registrar (CS-I)

/True copy/



To

The Principal Subordinate Judge, Madurai.

+1 CC to M/s.V.MARAGATHAVEL, Advocate, SR No.44869

+1 CC to Mr.K.P.NARAYANAKUMAR, Advocate, SR No.45179

C.R.P.(PD)No.451 of 2016
C.M.P.(MD) Nos.5456 of 2016
and 1944 of 2016

CM

SH/SS-2/SAR-I:19.09.2016:2P/4C