



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2016

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.R.P. (PD) (MD) No.915 of 2016
and C.M.P. (MD) No.4588 of 2016

1.M.Kanniappan
2.Thawbeeka

: Petitioners/Proposed Additional
Defendants 8 & 10/3rd parties

Versus

1.St.Michael Church,
Vedhanagar, Edalakudi, Nagercoil,
Rep. by the 2nd Plaintiff Parish Priest,
St.Michael Church,
Vedhanagar, Edalakudi post,
Vadiveeswaram Village,
Agastheeswaram Taluk,
Kanyakumari District.

2.Parish Priest,
St.Michael Church

3.T.Soosai Antony Michael

4.Anrony Prakasam

5.R.Alphonse : Respondents 1 to 5/Petitioners 1 to
5/Plaintiffs 1 to 5

6.Mrs.Fatima Beevi

7.Mrs.Meera Habeeb

8.Mrs.B.Jannathul Pithose

9.Jahabar Sathic : Respondents 6 to 9/Respondents 1 to
4/Defendants 1 to 4

10.N.Abubucker

11.Tmt.Sathikka

12.M.Mahin

13.S.Hameetha Banu : Respondents 10 to 13/Proposed
Additional Defendants 5 to 7 & 9/3rd Parties

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.07.2015 passed in I.A.No.37 of 2015 in O.S.No.478 of 2011 on the file of the II Additional District Munsif, Nagercoil and dismiss the said I.A.No.37 of 2015.

**ORDER**

This Revision challenges the order of learned II Additional District Munsif, Nagercoil in I.A.No.37 of 2015 in O.S.No.478 of 2011 dated 15.07.2015.

2. Under the order under challenge, the plaintiffs have been permitted to implead petitioners and others as defendants in the suit O.S.No.478 of 2011. O.S.No.478 of 2011 is an action moved by the respondents 1 to 5/ plaintiffs for declaration of title to the suit scheduled properties, recovery of possession as also mesne profits. By way of I.A.No.37 of 2015, plaintiffs, having moved action against four persons, sought to implead six others as defendants on the assertion that the original defendants had created various documents in respect of portions of the suit properties and effected fraudulent transactions and hence it was necessary to implead the proposed parties as additional defendants 5 to 10. On such application being allowed, the petitioners, who are proposed additional defendants 8 to 10 have moved the present revision.

3. We have heard learned counsel for the petitioners and perused the materials available on record.

4. It is the strenuous contention of learned counsel for petitioner that in allowing I.A.No.37 of 2015, the Court below has erred in not striking off the original defendants 1 to 4 from the array of defendants. He submits that such was a duty cast upon the Court under Order I Rule 10(2) C.P.C.

5. Paragraph 7 and 8 of the plaint in O.S.No.478 of 2011 reads as follows:

"7. The defendants have no ownership right over the suit items 1 and 2. The prior Sale deed in favour of the 1st defendant's vendor takes only 50 cents in S.No.987/A2 and it never includes the suit properties comprised in Survey No.987B. But mischievously the Ist Defendant when purchased the property in her name falsely included S.No.987/B having an extent of 14 cents also in her sale deed along with Survey No.987/A2. The executant of the sale deed in favour of Ist defendant had no right or possession over any portions of the suit properties comprised in S.No.987B. The said Survey No.987/B was mischievously and fraudulently included in the Sale deed in favour of Ist defendant.

8. It is now learnt that the Ist defendant had created false documents in favour of her children recently and on the basis of the same, the defendants 1



to 4 have influenced the revenue authorities and effected mutation in their names from 2009. On enquiry the Plaintiffs learned that it was on 18.6.2009. On the basis of the mistaken mutation entries the defendants attempted to disturb the possession of the Plaintiffs from the beginning of November, 2010. So the plaintiff filed Caveat petition dated 18.11.2010 and issued legal notice dated 18.11.2010 for which the defendants sent a false reply and attempted to encroach the suit items from the month of November 2010."

6.It is apparent that unless the plaintiffs are able to prove their case against the original defendants 1 to 4, the case against petitioners/proposed additional defendants 8 and 10, would not survive.

7.The Civil Revision Petition shall stand dismissed. No costs. Consequently connected Miscellaneous Petition also stands dismissed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The II Additional District Munsif,
Nagercoil.

+1cc to Mr.C.Dhanaseelan, Advocate Sr.No.25447

sj

AA/SK-SKN/16.06.2016/3p-3c

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