

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.4.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1386 of 2017
and
CMP.No.6422 of 2017

1. Papathi
2. Suseela .. Petitioners-proposed
parties/petitioners

Vs.

Varudhappa Nayakkar (died)

1. Kandasamy
2. Paapu
3. Thangammal
4. M.Balasubramaniam
5. M.Arumugam
6. K.Kannan
7. Seventheeswaran
8. Sengottaiyan
9. Aarayee
10. Raja
11. Vaanan
12. Selvarani

.. Respondents 1 to 13/
Defendants 1 to 13/
Respondents 1 to 12

13. Rathinam
14. Thangamani
15. Kavitha

.. Respondents 14 to 16-
Plaintiffs/
Respondents 13 to 15

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to allow the above C.R.P and set aside the order and decretal order dated 27.02.2017 made in I.A.No.40 of 2014 in O.S.No. 18 of 2008 on the file of the Sub Court, Rasipuram

For Petitioner : Mr.T.Dhanyakumar

ORDER

This Civil Revision Petition is filed to set aside the order and decretal order dated 27.02.2017 made in I.A.No.40 of 2014 in O.S.No. 18 of 2008 on the file of the Sub Court, Rasipuram.

2.The facts of the case are:

(i) The petitioners are third parties in O.S.No. 428 of 1999 which was subsequently re-numbered as O.S.No.18 of 2008. Respondents 13 to 15 are the plaintiffs in the suit and they have filed the above suit claiming $1/3^{\text{rd}}$ share in the properties of Chinnusamy by metes and bounds and allot $1/3^{\text{rd}}$ share to them.

(ii) According to the 13th respondent, she is the wife of Chinnusamy and 14th and 15th respondents are the daughters born out of their wedlock. The said Chinnusamy was taken to

Pondicherry for medical treatment in the year 1990 and subsequently, he did not return home. The respondents 13 to 15 sought for partition and allotment of their share. The other respondents did not accept for the partition. Therefore, they filed the above suit for the relief as stated above. Respondents 1 to 12 filed written statement and are contesting the suit. Trial commenced. Both the parties concluded their evidences and arguments were advanced on behalf of respondents 13 to 15 and suit was posted for arguments of respondents 1 to 12. At that stage, the petitioners have filed I.A.No.40 of 2014 for impleading them as defendants 14 and 15 on the ground that the first petitioner is the wife of Chinnusamy and second petitioner is the daughter of Chinnusamy. According to the petitioners, the 13th respondent was never married to Chinnusamy and she is only a concubine of Chinnusamy.

(iii) Respondents 13 to 15 filed counter to the aforesaid application and denied various averments in the application filed by the petitioners.

(iv) Before the learned Judge, the first petitioner was

examined as P.W.1 and five documents were marked. Both the plaintiffs and defendants 1 to 13 did not let in any oral or documentary evidence.

(v) The learned Judge after considering the averments made in the affidavit and the counter affidavit and also considering the materials on record and evidence of P.W.1 and documents relied on by the petitioners and also considering the fact that the suit is of the year 1999 dismissed the application which was filed nearly after 16 years when the suit was at the stage of arguments.

3. Against the order of dismissal, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the petitioner has let in oral and documentary evidence and proved that the first petitioner is the wife of Chinnusamy and the second petitioner is their daughter. Therefore, they are necessary and proper parties to the suit and also submitted that the learned Judge has erroneously dismissed the application.

5. These contentions are contrary to the facts and are untenable.

6. It is pertinent to note that the respondents 13 to 15 filed suit in the year 1999 and the respondents 1 to 12 filed their written statement on 01.12.2008 and are contesting the suit. The petitioners filed similar application in the year 2011 for impleading them as defendants in the suit. The said application was returned by the Court. They did not pursue the said application and again in the year 2014 filed the present application for impleading them as 13th and 14th respondents. The documents produced by them did not prove that the petitioner is the wife of Chinnusamy and the second petitioner is the daughter of Chinnusamy.

7. The learned Judge considering the evidences both oral and documentary and the contention of the respondents 12 to 15 that the petitioners have filed application only at the instance of the 2nd defendant/2nd respondent and also the fact that the suit is of the year 1999 and the application has been filed after 16 years after the commencement of trial, has rightly dismissed the application.

8. The learned Judge has rightly took note of the fact that if the parties are wife and daughter of Chinnusamy, they could have taken steps to bring on record or atleast pursue the application filed in the year 2011 itself.

9. The learned counsel has given cogent and valid reasons for dismissal of the application filed by the petitioner. In the circumstances, there is no illegality or irregularity in the order passed by the trial Court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

17.04.2017

Index : Yes
Internet : Yes
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To

The Sub Judge,
Rasipuram

V.M.VELUMANI, J.

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C.R.P.(PD)No.1386 of 2017

17.04.2017

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