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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.3139 of 2014

and

MP No.1 of 2014

1. Maheswari @ Alamelu
2. Prabhakaran
3. Thulasi
4. Subameenatchi
5. Rajkumar
6. Sadhasivam
7. Singaravelan
8. Ganesan
9. Prasanth
10. Suganya
11. Rajeswari

... Petitioners

Vs

1. Chinnathambi @ Arunachalam Pillai
2. Vanaja

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 09.04.2014 passed in I.A. No.1228 of 2013 in O.S. No.316 of 1996 on the file of the District Munsif Court, Sankari.

For petitioners : Mr.P. Jagadeesan

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 09.04.2014 passed in I.A. No.1228 of 2013 in O.S. No.316 of 1996 by the District Munsif Court , Sankari.

Brief facts leading to the filing of the instant Civil Revision Petition are as follows :-

2. The petitioners are the proposed defendants in the suit O.S. No.316 of 1996 filed by the first respondent / plaintiff



against the 2nd respondent / defendant, seeking for a declaration and injunction in respect of the suit schedule property which is comprised in Survey No.259 of 2002 at Ernapuram Village, Sankari Taluk, measuring an extent of 10 cents, approximately 4800/-sq. ft. The second respondent/ defendant has also filed the written statement in the said suit claiming right as owner over the same property. During the pendency of the suit, I.A. No.1228 of 2013 has been filed by the petitioners under Order I Rule 10 (2) and Section 151 of CPC, seeking to implead themselves as defendants in the suit, as they are also claiming rights in the suit schedule property, and claim to be the legal heirs of the deceased Thulsai Pillai, who was the original owner of the suit schedule property as well as the neighbouring lands. A counter affidavit has also been filed by the second respondent/ defendant in I.A No.1228 of 2013, wherein, they have disputed the petitioners / proposed defendants claim. Further they have stated that earlier, the suit was disposed of and was taken up for appeal to the first appellate Court and thereafter, the Second Appeal was also filed in S.A. No.1307 of 2011. But according to her, during the earlier round of litigation, no impleading application was filed by the petitioners, but only subsequent to the remand order passed by this Court remanding the matter back to the Trial Court, the instant application viz. I.A. No.1228 of 2013 was filed by the petitioners seeking permission of the Court to implead themselves as defendants in the suit. The second defendant has also stated that the suit schedule property is a self acquired property of Thulasi Pillai and therefore, the petitioners do not have any right whatsoever to make a claim in respect of the suit schedule property. Further, she has stated in the counter that the sale deed executed in favour of the second respondent / second defendant was executed on 18.11.1981 in Document No.1495 of 1981. At the time of filing of the counter, the said sale deed is a 32 year old document and no whisper whatsoever has been made by the petitioners for the past 32 years, when the counter was filed.

3. The Trial Court by its order dated 09.04.2014 in I.A. No.1228 of 2013 in O.S.No.316 of 1996 dismissed the said application on the ground that the petitioners have not filed the sale deed, dated 18.11.1981 registered as document No.1495 of 1981 in favour of the second respondent / defendant Vanaja and further observed that based on the materials available on record that the petitioners parents and other family members were also parties to the said sale to the second respondent / defendant. Aggrieved by the dismissal of I.A. No.1228 of 2013 in O.S. No.No.316 of 1996, the instant Civil Revision Petition has been filed.

4. Heard Mr.P. Jagadeesan, learned counsel for the petitioner.



5. Even though the Civil Revision Petition is of the year 2014, the matter is listed under the adjourned admission caption today. It is an admitted fact that the suit has been filed for declaration and injunction by the first respondent / plaintiff against the second respondent / defendant in respect of the suit schedule property measuring 10 cents. The petitioner / proposed defendants claimed right over the same property as legal heirs of the deceased Thulasi Pillai and his mother, who were the original owners of the suit schedule property as well as other properties. But, admittedly before the Trial Court, no document has been filed by them to establish their inheritance. As rightly pointed out by the Trial Court, the petitioners have not filed the sale deed dated 18.11.1981 registered as document No.1495 of 1981 in favour of the second respondent / defendant. Further as seen from the counter affidavit filed in I.A. No.1228 of 2013, the second respondent / defendant has stated that in the earlier round of litigation prior to the remand order passed by the High Court in the Second Appeal, the petitioners did not file any application to implead themselves as party defendants to the suit. The subject document by which, the second respondent / defendant came to be the absolute owner is in the year 1981 and admittedly no legal proceedings have been instituted by the petitioners against the second respondent / defendant claiming right over the suit schedule property as well as the other properties, which formed the subject matter of the said sale deed. The said sale deed was in the year 1981 and has rightly been stated in the counter filed by the second respondent / defendant in the suit that at the time of filing of counter, 32 years had elapsed from the date of the said sale deed. The Trial Court has considered all these aspects and only thereafter, it has dismissed the application filed by the petitioners / proposed defendants. This Court does not find any infirmity in the order passed by the Trial Court.

6. In the result the Civil Revision Petition is dismissed in the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar



To

The District Munsif,
Sankari.

+1cc to Mr.P.Jagadeesan, Advocate Sr.49549

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srg 26/07/2019