

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3121 of 2017
and C.M.P.No.14584 of 2017

1 B.Suresh
2 Mallika
3 B.Ramesh
4 Deepa

... Petitioners/Proposed Parties

Vs

1 Alamelu
2 R.Madhavan
Chinnaraja Konar (died)
Shanmugasundaram (died)
3 Rajamanickam Ammal
4 K.Selvi

... Respondents/Plaintiffs

... Respondents/Defendants

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 12.07.2017 made in I.A.No.363 of 2017 in O.S.No.102 of 2004 on the file of the III Additional District Judge, Salem.

For Petitioners : Mr.R.Neelakandan
For Respondents 3 & 4 : Mr.N.Anand Venkatesh

ORDER

The respondents 1 and 2 have filed a suit in O.S.No.102 of 2004 before the III Additional District Court, Salem for partition and separate possession. In the aforesaid suit, the revision petitioner has filed an application to implead themselves as parties in the suit. According to the petitioners, the revision petitioners also filed a suit in O.S.No.208 of 2015 to declare the probate in O.P.No.73/1982 granted on 24.2.1983 as null and void and consequently, the sale deed registered also be null and void and to declare the right over the title of the suit property. According to the petitioners, the property in the present case and in O.S.No.208 of 2015 are one and the same. Therefore, he filed the application in the present suit. However, the court below dismissed the said application. Challenging the aforesaid order, the petitioner has filed the Civil revision petition before this Court.

2 The learned counsel for the petitioners/third parties in the suit would submit that both the suit properties are one and the same. Therefore, the revision petitioners are also necessary parties in the said suit. Any judgment and decree passed in the present suit would affect the right of the revision petitioners. Hence, the court below ought to have allowed the said application. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondents/ defendants would submit that the present suit has been filed by the respondents 1 and 2 in the year 2004 and already trial has been commenced in the suit. At this stage, the present application has been filed only to drag on the proceedings. The petitioners have filed suit in O.S.No.208 of 2015 for declaration to declare the Probate granted on 7.12.1982 in O.P.No.73 of 1982 by the II Additional District Judge, Salem as null and void. Therefore, the present application has been filed to drag on the proceedings in the present suit. According to the learned counsel for the respondents, there is no whisper in the affidavit filed in support of the application that they are necessary parties in the suit. Without furnishing sufficient reason for impleading themselves as parties in the suit, they filed the present application. Therefore, the Court below considering the same, rightly rejected the said application. Therefore, the order passed by the court below does not warrant interference by this Court.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials on record.

5 It is not disputed that the suit in O.S.No.208 of 2015 has been filed by the petitioners before the Principal District Judge, Salem for

declaration to declare the Probate granted on 7.12.1982 in O.P.No.73 of 1982 by the II Additional District Judge, Salem as null and void. For the very same property, the present application has been filed by the petitioners for the reason that the suit property in O.S.No.208 of 2015 and the present suit is one and the same. Further, on perusal of the affidavit filed in support of the petition, the petitioner has not stated any reason to implead themselves as necessary parties in the said suit. The present suit in O.S.No.102 of 2004 has been filed in the year 2004. Now, trial has been commenced and the plaintiffs' side evidence is also concluded. At this stage, the present application has been filed without furnishing any reason in the affidavit filed in support of the petition to implead the petitioners as necessary parties. The only contention of the petitioners is that the suit property in O.S.No.102 of 2004 and O.S.No.208 of 2015 are one and the same. It is also admitted by the petitioners that they impleaded all the purchasers and aggrieved persons in the aforesaid suit. If the petitioners have any grievance against the plaintiffs in O.S.No.102 of 2004, the petitioners can also implead the plaintiffs in the present suit in order to avoid multiplicity of proceedings. Therefore, the trial court has rightly rejected the application filed by the petitioners holding that there is no proper reason in the affidavit filed in support of the petition. Therefore, no prima facie case is made out to entertain the Civil revision petition. There is no error or illegality in the order passed by the court below.

6 According the Civil revision petition fails and the same is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

7.11.2017

Index: Yes/No
Internet:Yes/No
vaan
To
The III Additional District Judge, Salem



WEB COPY

D.KRISHNAKUMAR,J.
vaan



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