

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) No.2088 of 2015 &
M.P.No.1 of 2015

1.Palaniammal
2.Poongodi

... Petitioners/
/Plaintiffs

Vs.

R.Nallasamy (died)
Sellammal (died)
1.Senniappan
2.Mohan Kumar

... Respondents/
Defendants 3 & 4

Prayer: Revision filed under Article 227 of the Constitution of India against the order and decreetal order dated 11.03.2015 made in I.A.No.473 of 2014 in O.S.No.646 of 2009 on the file of the II Additional District Munsif, Erode.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.S.Kaithamalai Kumaran

ORDER

The petitioners herein are the plaintiffs and the respondents are the defendants in the suit.

2. The plaintiffs have filed the suit in O.S.No.646 of 2009 on the file of the II Additional District Munsif, Erode, seeking for declaration, declaring the life interests of the 1st plaintiff, 1st defendant and 2nd defendant over the suit property, without creating any encumbrance over the suit property under the Will dated 17.05.2002 executed by late Ramasamy Gounder, Son of Muthusamy Gounder and duly registered in Document No.38 of 2002, Book 3 on the file of Sivagiri Sub Registrar Office; and declaring that the Will dated 17.05.2002 by late Ramasamy Gounder, Son of Mutusamy Gounder and duly registered in Document No.38 of 2002, Book 3 on the file of Sivagiri Sub Registrar office is the Testament of Late Ramasamy Gounder and for a consequential injunction restraining the defendants 1 and 3 from creating encumbrances or alienating the suit property during their life time.

3.The suit was decreed ex-parte on 12.09.2011. After the ex parte decree, the third defendant sold a portion of the suit property to the fourth defendant. Thereafter, the third defendant filed an Interlocutory Application to set aside the ex-parte decree and the same was allowed on 22.02.2012.

4. The petitioners herein have filed the Interlocutory Application in I.A.No.529 of 2013 to implead the third petitioner as fourth defendant in the suit, who is the subsequent purchaser and the said application was allowed on 23.01.2014. Thereafter the petitioners herein have also filed an Interlocutory Application in I.A.No.473 of 2014 seeking to amend the plaint i.e., to include the prayer challenging the sale deed dated 27.09.2011 executed by the second petitioner/third defendant in favour of the third petitioner/fourth defendant. The respondent filed their counter and opposed the averments made in the application.

5.Taking into consideration, the case of both the parties, the Trial Court, dismissed the application holding that the sale deed dated 27.09.2011 does not bind the petitioners.

6.Against the order of dismissal by the trial Court, the present Civil Revision Petition is filed.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

8. Learned counsel for the petitioners submitted that pending suit, the second respondent/third defendant sold a portion of the property on 27.09.2011 to the 4th defendant. Subsequently, the second respondent/third defendant filed the application to set aside the exparte decree and the ex parte decree was set aside. Subsequent to that, the petitioners have filed an application in I.A.No.529 of 2013 for impleading the third respondent as a fourth defendant in the suit. The said application was allowed on 23.01.2014 and subsequently, amendment petition was filed in I.A.No.92 of 2014 and the same was ordered on 20.02.2014 and amended copy of the plaint filed on 06.03.2014. Thereafter, the petitioners filed I.A.No.473 of 2014 seeking to amend the plaint i.e., to include the prayer to challenge the sale deed executed by third defendant in favour of fourth defendant, as it creates cloud over title. The plaintiffs have sought for a declaration that the sale deed is null and void.

9.The contention of the learned counsel for the respondents is that the third respondent/fourth defendant purchased the property after the decree was passed. It is a separate cause of action. If the petitioners have any grievance over the same,

they have to file a separate suit and hence, the contention of the petitioners is untenable.

10. I have carefully perused all the materials on record and heard the learned counsel for the parties.

11. The petitioners have filed the suit for declaration that the first plaintiff and defendants 1 and 2 have life interests in the suit properties as per the registered Will dated 17.05.2002 executed by late Ramasamy Gounder and that the said Will is the last testament of late Ramasamy Gounder and for injunction restraining the defendants 1 and 3 from creating, encumbrances or alienating the suit property in their life time. The suit was decreed ex parte on 12.09.2011. Thereafter, the third defendant, on 27.09.2011, sold a portion of the suit property to the fourth defendant. Subsequently, on application made by the 3rd defendant, exparte decree was set aside on 22.02.2012.

12. The petitioners filed an application in I.A.No.529 of 2013 for impleading the fourth defendant as party to the suit and the said application was allowed on 23.01.2014. After carrying out the amendment, the petitioners filed the present I.A.No.473 of 2014 to amend the plaint to include the prayer of declaration that the sale deed dated 27.09.2011 was registered as Document No.2485 of 2011, is null and void and consequential injunction restraining the defendants 3 and 4 and their men from interfering with the property. The petitioners have filed the application seeking amendment to clear the cloud created over their title to the property even though the said sale is not binding on them, as the sale was effected when the ex parte decree was in force and there was a decree of injunction restraining the defendants 1 and 3 from encumbering or alienating the property. Further, they also prayed for injunction restraining the defendants 3 and 4 from further dealing with the property.

13. Learned Judge, dismissed the application on the ground that the sale dated 27.09.2011, is not binding on the petitioners. Learned Judge failed to consider the fact that the sale deed dated 27.09.2011, has caused a cloud on the title of the petitioners and the same has to be cleared. In addition to the same, the learned Judge failed to consider the fact that the petitioners have also sought for consequential injunction restraining the defendants 3 and 4 from dealing further with the suit properties. Learned Judge has committed an error and irregularity in not considering the above facts.

14. In these circumstances, I am of the view that the order passed by the trial court is untenable and is liable to be set aside. Accordingly, the same is set aside. It is open to the

defendants 3 and 4 to raise their objections with regard to the limitation by way of additional written statement, if so advised. If such objection is raised, the learned Judge shall consider the same on merits along with other issues raised.

15. Accordingly, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

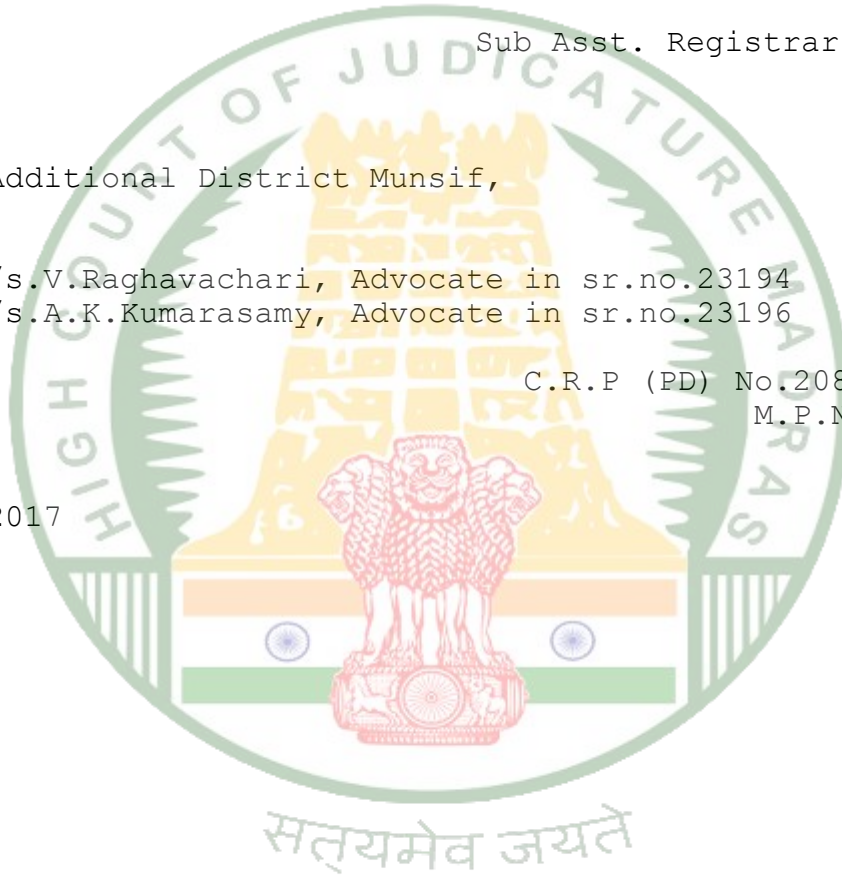
The II Additional District Munsif,
Erode.

+1cc to M/s.V.Raghavachari, Advocate in sr.no.23194

+1cc to M/s.A.K.Kumarasamy, Advocate in sr.no.23196

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PPA(CO)
NR 21/06/2017



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