

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.5106 of 2011
& M.P.Nos.1 of 2011 & 2 of 2014

1.Manickam

2.Ramasamy

.. Petitioners

Vs.

1.Srinivasa Warping and Sizing Mills
Rep. by its Partner K.R.Palanisamy

2.Lakshmiammal
Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 20.09.2011 made in R.E.A.No.71 of 2006 in R.E.P.No.61 of 1993 in O.S.No.275 of 1987 on the file of the Principal District Munsif Court, Tiruchengode.

For Petitioners

: Mr.S.Thangavel

For R1

: Mr.T.Arockia Doss

For R2

: No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal

order dated 20.09.2011 made in R.E.A.No.71 of 2006 in R.E.P.No.61 of 1993 in O.S.No.275 of 1987 on the file of the Principal District Munsif Court, Tiruchengode.

2. The petitioners are third parties, first respondent is the plaintiff and second respondent is the defendant in O.S.No.275 of 1987 on the file of the Principal District Munsif Court, Tiruchengode. The first respondent filed suit for specific performance of agreement of sale dated 18.12.1985. The said suit was decreed by the judgment and decree dated 13.05.1991. The first respondent filed R.E.P.No.61 of 1993 for execution of decree. The Execution Court executed the sale deed and registered the same. The first respondent filed R.E.A.No.162 of 2004 for delivery of possession of the property. The petitioners filed R.E.A.No.71 of 2006 in R.E.P.No.61 of 1993 contending that they have 2/4 shares in the suit property.

3. According to the petitioners, originally property in question belonged to one Palani Pandithar and Pappammal, who are the grand parents of the petitioners. The grand parents executed a sale deed dated 17.03.1960 in favour of the petitioners' father and

mother viz., Marimuthu Pandithar and the second respondent/Lakshmiammal. The said Marimuthu Pandithar settled his half share to the second respondent, the mother of the petitioners. One of the creditors viz., Chinnammal filed O.S.No.387 of 1982 on the file of the District Munsif Court, Tiruchengode, for recovery of money and in the said suit, settlement deed executed by Marimuthu Pandithar in favour of second respondent/Lakshmiammal was declared as null and void. Marimuthu Pandithar, second respondent, petitioners and their brother were enjoying the properties jointly and Marimuthu Pandithar died intestate on 18.12.1994. The second respondent did not have any right or title over the entire suit property. Therefore, the agreement of sale dated 18.12.1985 entered into by the second respondent in favour of the first respondent, agreeing to sell the suit property, is not valid.

4. The first respondent filed counter affidavit and submitted that by settlement deed executed by Marimuth Pandithar, the second respondent became the absolute owner of the suit property and she executed agreement of sale dated 18.12.1985, which was registered with the Sub-Registrar's Office, Namakal, in favour of

the first respondent. The first respondent filed O.S.No.275 of 1987 for specific performance of agreement of sale and the said suit was decreed on 13.05.1991. The first respondent was not a party to the suit in O.S.No.387 of 1982 filed by one of the creditors viz., Chinnammal and therefore, the said judgment is not binding on the first respondent. The second respondent contested the said suit, she did not mention anything about the suit filed by the first respondent and decree obtained by the first respondent against the second respondent. The petitioners claimed to reside with the second respondent and they have come out with the present application in the year 2006 only to drag on the proceedings and to delay the delivery of possession.

5. The second respondent/mother of the petitioners filed counter affidavit supporting the case of the petitioners.

6. Before the learned Judge, the second petitioner was examined as P.W.1 and marked five documents as Exs.P1 to P5. The first respondent examined one K.R.Palanisamy as R.W.1 and he did not mark any documents.

7. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application holding that the application filed by the petitioners is not maintainable and contention of the petitioners that they came to know about the proceedings only in the year 1997 is unbelievable, as the suit filed by the petitioners in O.S.No.632 of 2002 for partition was dismissed for default.

8. Against the order of dismissal dated 20.09.2011 made in R.E.A.No.71 of 2006 in R.E.P.No.61 of 1993 in O.S.No.275 of 1987, the present civil revision petition is filed by the petitioners/third parties.

9. Heard the learned counsel for the petitioners as well as learned counsel for the first respondent and perused the materials on record. Though notice was served on the second respondent and her name is printed in the cause list, there is no representation on behalf of the second respondent either in person or through counsel.

10. The petitioners are sons of one Marimuth Pandithar and

second respondent/Lakshiammal. Admittedly, the property in question originally belonged to one Palani Pandithar and Pappammal, who are the grand parents of the petitioners and they sold the property to the parents of the petitioners, second respondent and Marimuth Pandithar. It is further admitted that the said Marimuthu Pandithar settled his half share on his wife/second respondent. After settlement only, during the life time of Marimuthu Pandithar, the second respondent entered into an agreement of sale dated 18.12.1985 agreeing to sell the suit property to the first respondent and the sale agreement was registered in the Sub-Registrar's Office, Namakkal. As the second respondent did not comply with the terms of agreement of sale, the first respondent filed the present suit in O.S.No.275 of 1987 against the second respondent for specific performance of agreement of sale. The second respondent did not contest the suit and the said suit was decreed exparte on 13.05.1991. The first respondent filed R.E.P.No.61 of 1993 to execute the decree of specific performance. The Execution Court executed the sale deed as per the decree passed in favour of the first respondent. The first respondent filed R.E.A.No.162 of 2004 for delivery of possession. After six years of said R.E.A. filed by the first respondent for

delivery of possession, the petitioners filed the present R.E.A.No.71 of 2006 in R.E.P.No.61 of 1993 claiming 2/4 shares in the suit property on the ground that the settlement deed executed by their father in favour of their mother/second respondent was set aside by the District Munsif Court, Tiruchengode, in O.S.No.387 of 1982, which was filed by one of the creditors of their father Marimuthu Pandithar. In view of the same, the second respondent is not owner of the entire suit property and agreement of sale entered into by the second respondent with the first respondent is not valid.

11. From the materials on record, it is seen that agreement of sale was executed by the second respondent in favour of the first respondent, after her husband/father of the petitioners Marimuthu Pandithar executed settlement deed dated 15.04.1981 in her favour. While Marimuthu Pandithar was alive, even after the decree passed in O.S.No.275 of 1987 filed by the first respondent and the decree passed in O.S.No.387 of 1982 filed by one of the creditors against Marimuthu Pandithar, neither the creditor nor Marimuthu Pandithar or second respondent disputed the validity of the agreement of sale dated 18.12.1985 executed by the second

respondent in favour of the first respondent. As the petitioners claimed to be living along with their parents, their contentions that they were not aware of the suit in O.S.No.275 of 1987 filed by the first respondent against the second respondent, decree dated 13.05.1991 and in R.E.P.No.61 of 1993, execution of sale deed in favour of the first respondent by the Court, are unbelievable. Till 2006, they have not taken any steps claiming right over the suit property. They admitted in the cross-examination that they came to know about the agreement of sale in the year 1997. They admitted the said agreement of sale executed by the second respondent in favour of the first respondent, when their father Marimuthu Pandithar was alive. By that time, the first respondent filed R.E.P. No. 61 of 1993. The petitioners have not taken any steps even after coming to know about the agreement of sale in the year 1997 claiming their share in the suit property. The petitioners claimed that they along with their father Marimuthu Pandithar, second respondent and another brother were enjoying the suit property jointly. They have not stated in the circumstance as to how they are entitled to 2/4 shares in the entire property, even assuming that the settlement deed executed by their father is not valid.

12. The learned Judge considering the contention of the first respondent that the first respondent is not a party in O.S.No.387 of 1982 and therefore, the decree passed in the said suit is not binding on the first respondent, has rightly dismissed the application filed by the petitioners by giving cogent and valid reasons and rejected the claim of the petitioners in the suit property by exercising his power conferred on him. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 20.09.2011.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.08.2017

Index : Yes/No

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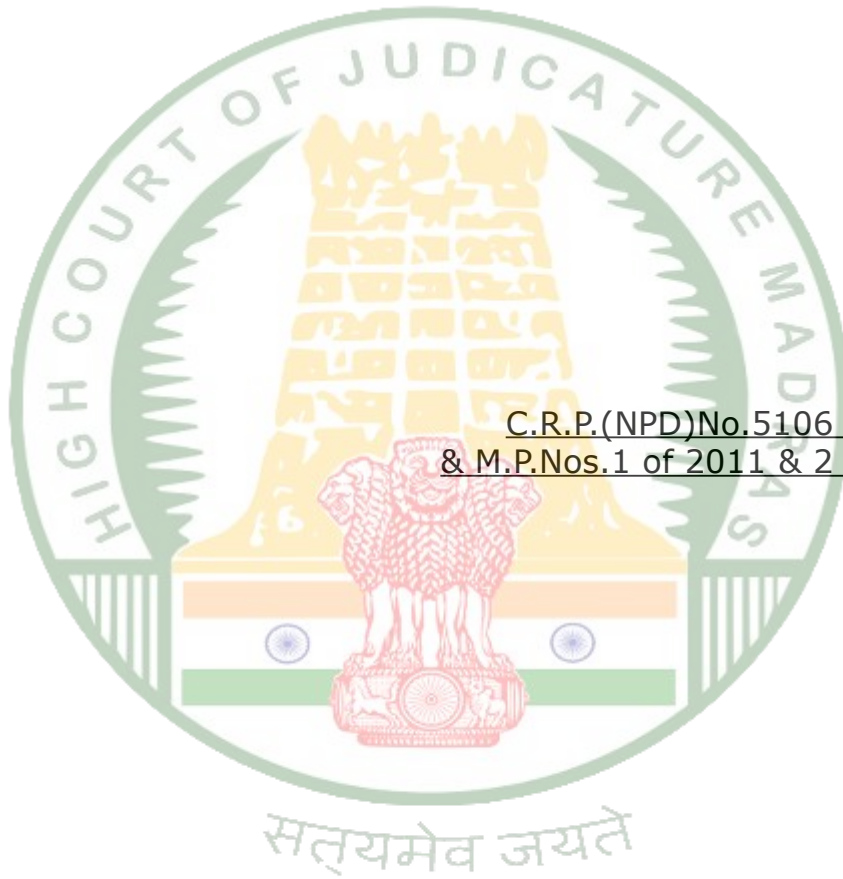
To

The Principal District Munsif, Tiruchengode.

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V.M.VELUMANI, J.

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