

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.2183 of 2016
and C.M.P.Nos.11367 & 11368 of 2016

D.Purushothaman

...Petitioner

Vs

1.D.Kuppa Bai
2.Sri Seetharaman
3.M.Jeeva

...Respondents

Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 19.11.2015 in I.A.No.242 of 2012 in A.S.No.2 of 2011 on the file of the learned Additional Subordinate Judge, Chengalpattu.

For Petitioner : Mr.S.Natanarajan
For Respondents : Mr.G.Mahesh Kumar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 19.11.2015 in I.A.No.242 of 2012 in A.S.No.2 of 2011

on the file of the learned Additional Subordinate Judge, Chengalpattu.

2.The first respondent namely, Kuppabai has filed a suit in O.S.No.6 of 2000 for declaration of title and also for injunction in respect of the suit property. The suit was decreed, against which, the first defendant/petitioner herein has preferred A.S.No.2 of 2011. During pendency of the appeal, the petitioner has filed an application in I.A.No.242 of 2012 under Order 1 Rule 10(1) and (2) C.P.C., to implead a person, who got the suit property by way of settlement executed by the plaintiff/first respondent herein. After contest, that application was dismissed, against which, the first defendant has preferred this revision.

3.Learned counsel for the petitioner would submit that the plaintiff/first respondent has executed a settlement deed in favour of the third respondent herein. Therefore, the presence of the third respondent is necessary and the first appellate Court ought to have allowed the application. Hence, he prays for allowing the revision.

4. Resisting the same, learned counsel for the respondents would submit that while the suit was pending, the settlement deed came into existence. In the suit, the documents under Exs.B1 to B4 have been filed by the defendants. At that time, some portion of the suit property has been sold to third parties, but the petitioner has not filed any application to implead the third parties as parties to the proceedings. It is further submitted that the settlee steps into the shoes of the settlor, if the rights of the settlor is defeated, the settlee has no right over the property. He would further submit that after the appeal has been posted for judgment, the petitioner has come forward with the present application only with a view to drag on the proceedings. The first appellate Court has rightly dismissed the application. Therefore, he prays for dismissal of the revision.

5. I have heard the submissions made by both sides and perused the typed set of papers.

6. The first respondent as a plaintiff has filed a suit for declaration and injunction against two persons. That suit was decreed. Challenging the same, the first defendant, who is the

petitioner herein, has preferred an appeal. When the appeal was posted for judgment, the petitioner has preferred the present application to implead the third respondent, who is the daughter of the first respondent, as a party to the appeal.

7.It is rightly pointed out by the learned counsel for the respondents that in the list of documents, the defendants have marked Exs.B1 to B4, which shows that the first respondent has executed sale deeds in faovur of third parties. Furthermore, while the suit was pending, the first respondent has executed the settlement deed in favour of her daughter/third respondent on 27.08.2008. The judgment in the suit was pronounced on 23.09.2010. Aggrieved over the same, the petitioner has preferred the appeal and when the same has been posted for judgment, the petitioner has come forward with the present application. So it clearly shows that the petitioner with a malafide intention to drag on the proceedings, has filed the present application to implead the third respondent as party to the appeal.

8.It is to be noted that the mother has settled the property in favour of her daughter and the daughter has also taken the

possession of the property. If the mother lost her right over the property, the daughter/third respondent, who is the settlee, has also no right over the property. In such circumstances, I am of the view that the appellate Court considered all the aspects in proper perspective and came to the correct conclusion. Therefore, the fair and decreetal order passed by the first appellate Court does not warrant any interference and it is hereby confirmed. Consequently, the revision is dismissed.

9. In the result, the Civil Revision Petition stands dismissed. The first appellate Court is directed to dispose of the appeal in A.S.No.2 of 2011 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2017

kj

To

Learned Additional Subordinate Judge, Chengalpattu.

R.MALA,J.

kj

C.R.P(NPD).No.2183 of 2016
and C.M.P.Nos.11367 & 11368 of 2016

27.02.2017

<http://www.judis.nic.in>