

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(PD).No.3747 of 2010
and M.P.No.1 of 2010

1.P.R.Santha
2.A.R.Suseela

.. Petitioners

Vs.

1.K.N.Jagannathan
2.K.N.Vanajammal
3.K.N.Vatsala
4.Munirathinammal
5.K.V.Ramanathan
6.K.V.Viswanathan
7.K.V.Ragupathi
8.Rohini Shanmuga Rao
9.Meera
10.K.Subadra
11.K.B.Ramesh
12.K.B.Vijayaganesh
13.D.S.Nagarajan
14.K.J.Kumari

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated, 06.08.2010, made in I.A.No.599/2008, in O.S.No.3/2004, on the file of Additional District and Session Judge (Fast Track Court), Vellore.

For Petitioners : No appearance

For R1 : Mr.J.Ram

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 06.08.2010, made in I.A.No.599/2008 in O.S.No.3/2004, on the file of Additional District and Session Judge (Fast Track Court), Vellore.

2. The petitioners are plaintiffs and the respondents are defendants in O.S.No.3 of 2004, on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore. The petitioners filed suit originally against the respondents 1 to 12. Subsequently, they impleaded the respondents 13 and 14 as defendants in I.A.No.599/2008, on the ground that the respondents 13 and 14 are the purchasers, pending suit. The 1st respondent filed written statement on 30.08.2001 and additional written statement on 24.02.2006. The 7th respondent filed written statement on 26.10.2001 and 13th and 14th respondent filed the separate written statement on 12.12.2005 and are contesting the suit.

3. The petitioners filed I.A.No.599 of 2008 for impleading proposed parties viz., K.Janardanan, Sakunthala, N.M.Chandrasekara Naidu, N.C.Sridhar as defendants 15 to 18. According to the petitioners, the 1st respondent in the written statement had stated that he sold the property to one K.Janarthanan and Sagunthala, wife of

02.07.1997. In view of the same, the petitioners have filed the present I.A.No.599 of 2008 for impleading the proposed parties as necessary and proper party to the suit as the sale is null and void.

4. The first respondent filed counter affidavit on 10.10.2008 and submitted that already a partition was effected between the respondents 1 to 3 in one part and respondents 4 to 12 in other part, in the year 1997. The first respondent sold the property allotted to him to the proposed parties, before filing of the suit. The present application filed by the petitioners is belated one and is liable to be dismissed.

5. The 7th respondent filed counter affidavit and the same was adopted by the respondents 4 to 6 and 8 to 12 and submitted that in the proof affidavit filed by the first petitioner, she had stated that petitioners are not claiming any partition in Item Nos.1 to 16 of the suit properties, which were allotted to the respondents 4 to 12.

6. The proposed parties, 16th respondent and 18th respondent filed separate counter affidavits on 11.11.2008 and 06.05.2009 respectively. The 17th respondent adopted the counter filed by the 18th respondent and submitted that they are the bonafide purchasers of the property allotted to the first respondent in the partition effected in the year 1997. The father of the respondents 1 to 3,

bequeathed his share of the property to the respondents 1 to 3 by Will dated 20.01.1993. After the death of their father, partition was effected in the year 1997 and the property purchased by proposed parties was allotted to the share of the first respondent. The proposed parties are bonafide purchasers before filing of the suit by the petitioners for valuable consideration.

7. The learned Judge, considering the materials on record, averments in the affidavit and counter affidavit, dismissed the application, holding that the present application is filed only to drag on the proceedings.

8. Against the said order dated 06.08.2010, made in I.A.No.599/2008 in O.S.No.3/2004, the present Civil Revision Petition is filed by the petitioners.

9. When the Civil Revision Petition was taken up for hearing on 05.09.2017, there was no representation for the petitioners. On 11.09.2017 also, there was no representation for the petitioners. On the same day, the learned counsel appearing for the first respondent appeared and submitted that Mr.A.Anbarasu, the learned counsel for petitioners on record is no more. Hence, this Court directed the Registry to print the name of Mr.A.Gowthaman as the counsel for the petitioners and list today. Therefore, this Court has taken up the Civil

Revision Petition for hearing on merits.

10. Heard the learned counsel appearing for the first respondent and perused the materials on record. Though notice has been served on the respondents 2 to 14 and their names are printed in the cause list, there is no representation either in person or through counsel.

11. From the materials on record, it is seen that the petitioners have filed suit in the year 1998. The first respondent filed written statement on 30.08.2001. In the written statement, the first respondent has stated that as per the partition deed of the year 1997, the property sold by him to the proposed parties was allotted to him and he sold the property to the proposed parties before filing of the suit. In spite of such stand taken by the first respondent in the written statement filed on 30.08.2001, the petitioners did not take any steps immediately to implead the proposed parties. They have filed the present application only in the year 2008, after commencement of trial. It is not in dispute that the first respondent has sold the property to the proposed party, before filing of the suit.

12. According to the first respondent, the petitioners were aware of the said sale at the time of filing the suit itself. From the averments made in the written statement, it is seen that the first

respondent has stated about the said sale. In such circumstances, the petitioners, after coming to know of the sale in the year 1997, have not taken any steps to set aside the said sale, within 3 years from the date of knowledge, in the year 2001. The petitioners have filed the present application, belatedly, after commencement of trial. The learned Judge has considered all the above facts and dismissed the application on the ground that it is a belated one and was filed only to drag on the proceedings. Therefore, there is no irregularity or illegality warranting interference with the order of the learned Trial Judge dated 06.08.2010 made in I.A.No.599 of 2008.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2017

Index: Yes/No

dh/gsa

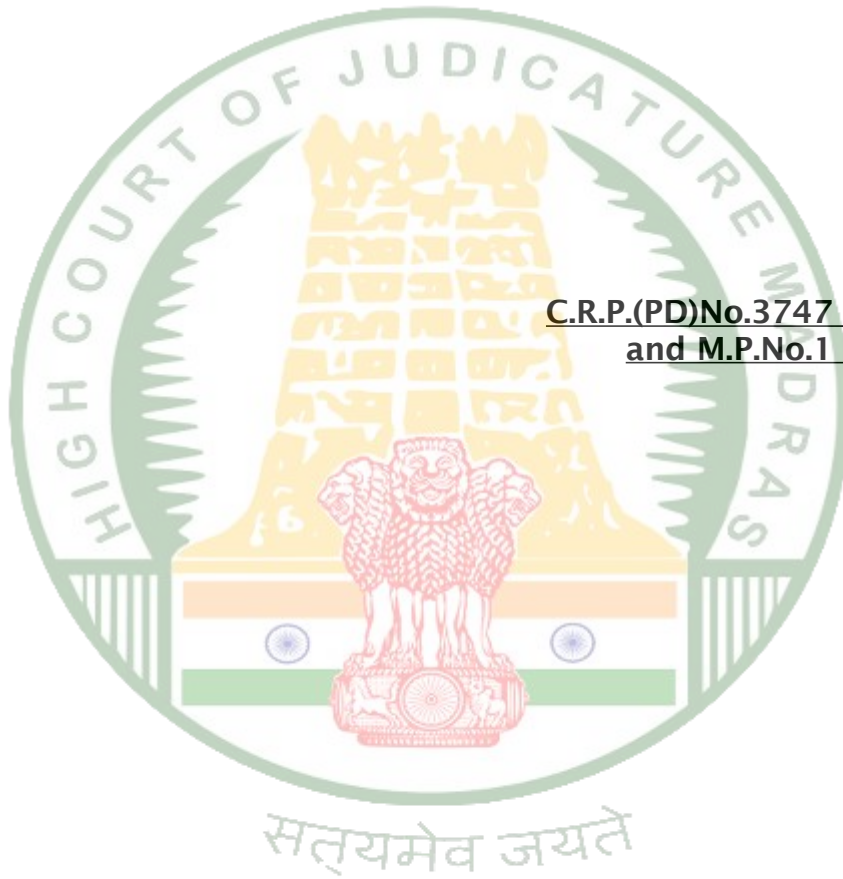
Note: The Registry is directed to send the copy of the order directly to the petitioners.

To

The Additional District and Session Judge,
(Fast Track Court), Vellore.

V.M.VELUMANI, J.

dh



C.R.P.(PD)No.3747 of 2010
and M.P.No.1 of 2010

WEB COPY

12.09.2017