

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.2814 of 2012
and
M.P.No.1 of 2012

1.Peria Varadaiya Gounder @
Varappa Gounder
2.Varadammal

.. Petitioners

Vs.

1.Nanjappan
2.Selvaraj @ Jayamoorthy
3.Kuppan @ Kuppusamy
4.Rangasamy
5.Chinnasamy @ Venkatraman

.. Respondents

Revision filed under Article 227 of Constitution of India against the fair and decretal order in I.A.No.314 of 2009 in O.S.No.391 of 2004 dated 19.03.2012 on the file of the District Munsif Court, Sathyamangalam.

For Petitioners : Mr.S.R.Balasubramaniam

For Respondents : No Appearance

ORDER

This revision is directed against the order of the learned District Munsif, Sathyamangalam dated 19.03.2012 in I.A.No.314 of 2009 in O.S.No.391 of 2004, dismissing the petition filed under Order 1, Rule 10(2) of CPC. The petitioners herein are the plaintiffs in the suit and the respondents 1 to 3 herein are the defendants.

2. The plaintiffs have filed the suit seeking to declare that they are the title holders of the line fence "C" & "E" shown in the plaint plan and also permanent injunction restraining the defendants, their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of suit cart track, foot path etc.

3. Resisting the suit, defendants 1 to 3 have filed the written statement.

4. On contest, the suit was dismissed by the trial Court vide judgment dated 19.12.2007. Aggrieved by the said judgment, the plaintiffs have preferred A.S.No.17 of 2008 before the Principal Sub Court, Gobichettipalayam. By the judgment dated 19.08.2008, the learned Subordinate Judge, Gobichettipalayam set aside the judgment

of the trial Court and remitted the suit to the trial Court for fresh disposal. In his judgment, the learned Subordinate Judge, directed the trial Court to give an opportunity to both sides to adduce further oral and documentary evidence and to dispose of the case within four months from the date of the judgment. The learned Subordinate Judge further directed the parties to appear before the trial Court on 05.09.2008.

5. Thereafter, when the suit was taken up for trial by the trial Court, the plaintiffs have filed I.A.No.314 of 2009, seeking to implead Thiruvallargal Rangasamy and Chinna Ramaswamy @ Venkataraman as defendants 4 and 5 in the suit alleging that the basis for the claim of the plaintiffs is on two sale deeds dated 09.06.1966 and 15.09.1966 and that the vendors of the sale deed dated 15.09.1966 namely Rangasamy and Venkataraman are necessary parties to the suit.

6. Resisting I.A.No.314 of 2009, the defendants 1 to 3 have filed counter stating that the petitioners have not specifically pleaded as to how and why the vendors under sale deed dated 15.09.1966 are necessary parties to the suit. Further, there is no whisper why the proposed defendants were not impleaded as parties when the suit was

instituted. It is further stated that only to drag on the trial proceedings, the petitioners have filed the petition and prays for dismissal of the suit.

7. Upon consideration of the rival submissions, the trial Court dismissed the petition.

8. Aggrieved by the same, the plaintiffs have filed the present revision on the following grounds:

(1) The order of the trial Court rejecting the prayer in the Interlocutory Application is against law and contrary to the facts and circumstances of the case.

(2) The trial Court failed to appreciate that the proposed defendants are necessary parties to the suit, as the plaintiffs have purchased the property from the proposed defendants.

(3) The trial Court failed to appreciate the written statement averments that the plaintiffs are not having title over the suit property has to be disproved through impleading the proposed defendants.

(4) The trial Court failed to appreciate that the lower

Appellate Court remanded the suit to the trial Court by setting aside the judgment and decree in the suit dated 19.12.2007 by giving opportunity to both the parties to let in oral and documentary evidences to prove their respective statements and to dispose of the case within four months.

(5) The trial Court wrongly understood the provision of Order 1, Rule 10(2) C.P.C.

9. I heard Mr.S.R.Balasubramaniam, learned counsel for the petitioners and perused the materials available on record. Despite service, the respondents have not entered appearance.

10. The petitioners sought impleadment of the proposed defendants solely on the ground that their case is based on two sale deeds dated 09.06.1966 and 15.09.1966 respectively and that the vendors under the sale deed dated 15.09.1966, namely the proposed defendants, are necessary parties to the suit.

11. In its order under revision, the trial Court observed that the plaintiffs have failed to establish how the proposed defendants are

necessary parties to the suit; the plaintiffs have also failed to establish how the proposed defendants would be affected by the judgment to be passed in the suit and the plaintiffs have not proved the ingredients stated in Order 1, Rule 10(2) C.P.C. Prima facie, I am in agreement with the aforesaid findings of the trial Court for the reasons infra.

12. Admittedly, the petitioners have failed to prove how the proposed defendants are necessary parties to the suit and without whom decree cannot be passed. In a suit for declaration by the plaintiff on the basis of the sale deed and when the defendant denied the purchase of the property or right of the plaintiff, as the case may be, then it is open to the plaintiff in the suit to take steps to summon to the vendor of the sale deed to prove the purchase and/or examine the vendor. On seeing the averments in the petition, I find that in order to prove the purchase of the property only, the petitioners seek to implead their vendors as defendants 4 and 5 in the suit, the same cannot be permitted.

13. On a perusal of the first appellate Court judgment, I find that the first appellate Court directed the trial Court to give an opportunity to both sides to adduce further oral and documentary evidence and

dispose of the suit. There is no specific finding to file a petition for impleadment etc. by first appellate Court in the appeal. As stated supra, the petitioners have failed to establish the prejudice to be caused to the proposed defendants in case if they are not impleaded in the suit as party defendants. Moreover, as stated supra, in a suit for declaration of title, the vendor of the property need not be impleaded as defendants as of right. Further, going through the nature of the suit in hand, in the absence of vendor as party defendants, the suit can be decided on its own merits in accordance with law.

14. It is pertinent to point out that the suit is of the year 2004. As stated supra, originally the suit was dismissed on 19.12.2007 after contest, against which, first appeal preferred and the same was remitted back to the trial Court vide judgment dated 19.08.2008. Thereafter, only the petitioners have filed petition seeking to implead the vendors of the suit property as party defendants. The aforesaid act of the petitioners would show that only to protract the proceedings of the suit, the petitioners have filed the petition and the trial Court was right in dismissing the petition for impleadment. Further, there is no valid ground to interfere with the order of the trial Court and the grounds raised in the grounds of revision are vague.

15. For the foregoing reasons, the order of the trial Court is confirmed and the revision is dismissed. No costs.

06.01.2017

Note: Issue order copy on 09.03.2018
vs

Index : Yes
Internet : Yes

To

The District Munsif,
Sathyamangalam.

M.V.MURALIDARAN,J.

VS

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and
M.P.No.1 of 2012**

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