

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP PD NO.4204 of 2012
and MP NO.1 OF 2012

1.P.Vadivelu Naicker

2.S.Kanniappa Naicker

... Petitioners

Vs

Girija Balasubramanian

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed by the learned Subordinate Judge, Tiruttani, Thiruvallur District made in I.A.No.141/11 in O.S.No.27 of 2011 dated 29.02.2012.

For Petitioners : Mr.S.Vijayakumar

For Respondent : Mrs.Uma Rani for
M/s.T.S.Arulraj

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order made in I.A.No.141/11 in O.S.No.27 of 2011 dated 29.02.2012.

2. The petitioners are the defendants and the respondent is the plaintiff in the suit in O.S.No.17 of 2011 filed for declaration of title and for permanent injunction, before Subordinate Judge, Tiruttani. The petitioners filed written statement on 15.09.2009 and are contesting the suit. The respondent filed I.A.No.141 of 2011 for amendment of the plaint to include the prayer for the declaration that preliminary decree dated 15.06.1994 passed in O.S.No.1032 of 1987 as null and void.

3. According to the respondent, she has purchased the suit property by way of sale deed dated 26.10.1984 from one Dharman and she is in possession and enjoyment of the suit property from that date onwards. The petitioner filed O.S.No.1032 of 1987 without impleading the necessary parties including the vendors of the respondent and obtained ex parte preliminary decree by playing fraud on the court.

4. The petitioners filed counter and submitted that respondent herein was 12th defendant in O.S.No.1032 of 1987 filed for passing of final decree and after contest, preliminary decree

was passed. In the final decree application filed by the petitioner, the respondent appeared through Advocate A.Sekar Babu and filed worksheet. After considering the Advocate Commissioner's report, final decree was passed on 16.12.2006 allotting the suit properties to the petitioners and the other share holders. The respondent has not challenged the preliminary decree or final decree passed in O.S.No.1032 of 1987. Suppressing this fact, the respondent filed present application for amendment to include the prayer of relief for declaration to declare the preliminary decree as null and void.

5. Before the learned Judge, no oral and documentary evidence was let in by the parties. The learned Judge allowed the application for amendment holding that whether the respondent is entitled to declaration now sought for, can be decided only after conclusion of the trial and no prejudice would be caused to the petitioners and others by allowing the application for amendment.

6. Against the said order dated 29.02.2012 made in I.A.No.141/11 in O.S.No.27 of 2011 dated 29.02.2012, the present Civil Revision Petition has been filed.

7. The learned counsel appearing for the petitioners submitted that the respondent/plaintiff was 12th defendant in O.S.No.1032 of 1987 for final decree. She also participated in the final decree proceedings and filed worksheet in the final decree application through her Advocate. She has not challenged the preliminary or final decree. She is not entitled to seek a declaration that preliminary decree is null and void on the ground of not impleading necessary parties and on the ground of fraud being played on the court.

8. The respondent filed counter in MP No.1 of 2012 in CRP No.4204 of 2012. and submitted that CRP is liable to be dismissed on the ground of delay in latches. After amendment was ordered in I.A.No.141 of 2011, amendment was carried out and amended copy of the plaint was filed. The respondent let in oral and documentary evidence and suit is posted for cross examination of the respondent as PW1. The learned counsel for the respondent contended that there was a partition prior to 1971 and in the suit property, larger extent was allotted to respondent's vendor and respondent purchased the property. The petitioners, without impleading the vendor of the respondent or respondent, obtained a preliminary

decree behind her back. The declaration sought for is a consequential relief, in order to avoid multiplicity of proceedings and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

10. The learned counsel for the petitioner referred to final decree passed by the Trial Court in I.A.No.1080 of 1996 on 16.12.2006 filed alongwith the typed set of papers. From the copy of the final decree, it is seen that the respondent is shown as 12th defendant. She was impleaded as 12th respondent by order dated 17.09.2005 in I.A.No.381 of 2005. The respondent was represented by learned counsel, Mr.A.Sekar Babu. From the copy of final decree, it is clear that the respondent, being made as a party in the final decree and represented through counsel, was aware of the preliminary decree. The respondent has not taken steps either to set aside the preliminary decree passed or filed appeal challenging the preliminary decree. The respondent has not denied the averments of the learned counsel for the petitioner that respondent filed worksheet through her advocate in the final decree

proceedings. Having failed to challenge the preliminary decree when she was aware of the same during pendency of the final decree proceedings, it is not open to the respondent to seek declaration declaring the preliminary decree dated 15.06.1994 as null and void.

11. The learned Judge failed to consider the averments of the petitioners that respondent was a party in the earlier proceedings and participated in the final decree proceedings by filing worksheet through her Advocate. The reason given by the learned Judge for allowing the application for amendment is not valid. At the time of admission of CRP, this Court has granted interim order. In view of the same, the contention of the respondent that CRP is liable to be dismissed on the ground of delay is without any merits. The learned Judge has committed irregularity in allowing the application by not considering the objections of the petitioner and failed to give a finding on the said objection.

12. In the above circumstances, the order passed by the learned Judge dated 29.02.2012 made in I.A.No.141 of 2011 in O.S.No.27 of 2011 is liable to be set aside and it is accordingly set

aside. The learned Judge is directed to return the amended copy of the plaint and eschew the evidence with regard to such declaration and reject the documents filed by the respondent in respect of the said declaration.

13. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. Considering the fact that the suit is of the year 2011, the learned Trial Judge is directed to dispose of the suit, as expeditiously as possible, not later than four months from the date of receipt of a copy of this order.

07.07.2017

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Index : Yes/No

To

The Subordinate Judge,
Tiruttani,
Thiruvallur District

V.M.VELUMANI, J.

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