

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4429 of 2012
& M.P.No.1 of 2012

1.Thangammal
2.Chellammal
3.M.Palanisamy
4.S.N.Krishnan
5.Thangavel

.. Petitioners

Vs.

1.Periyannan
2.Arumugam
3.Alagappan
4.Murugesan
5.Palanisamy
6.Ramasamy
7.Pappa
8.Seeni
9.Kamaraj
10.Selvi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.08.2012, made in I.A.No.490 of 2012 in O.S.No.298 of 2008 on the file of the District Munsif Court, Sankari.

For Petitioners : Mr.M.Guruprasad
For R1 : No appearance
For R3 to R5 : Mr.P.Kaviri Nadar
for Mr.N.Manokaran
For R2, R6 to R10: Exparte

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 10.08.2012, made in I.A.No.490 of 2012 in O.S.No.298 of 2008 on the file of the District Munsif Court, Sankari.

2. The petitioners 1 and 2 are the plaintiffs, petitioners 3 to 5 are the proposed parties and respondents are the defendants in O.S.No.298 of 2008 on the file of the District Munsif Court, Sankari. The third respondent filed written statement in the month of June, 2009 and additional written statement on 15.02.2011, which was adopted by respondents 4 and 5. The first respondent filed written statement on 10.10.2011 and is contesting the suit. Trial commenced. The petitioners 1 and 2 let in evidence and after cross examination, their evidence was closed. The evidence on behalf of the respondents was let in after chief examination of DW1. When the suit was posted for cross examination of DW1, the petitioners filed I.A.No.490 of 2012 for impleading the petitioners 3 to 5 as plaintiffs 3 to 5. According to the petitioners, the petitioners 1 and 2 sold the property on 06.02.2009 to the petitioners 3 to 5,

pending suit. The petitioners 1 and 2 retained the possession of the suit property. The petitioners 3 to 5 paid only part of the sale consideration and retained the balance sale consideration. The petitioners 3 to 5 agreed to pay the balance sale consideration after decree is passed in the suit. The petitioners 1 and 2 came to know that petitioners 3 to 5 are necessary to the suit and filed the present petition for impleading them as plaintiffs 3 to 5.

3. The third respondent filed counter affidavit and the same was adopted by the respondents 4 and 5. According to the respondents 3 to 5, the petitioners 1 and 2 themselves do not have any title to the suit property and the sale in favour of the petitioners 3 to 5 is invalid. The petitioners 3 to 5 have paid only a part of the sale consideration and agreed to pay the balance sale consideration after disposal of the suit. The petitioners 1 and 2 retained the possession of the suit property. In view of the same, the petitioners 3 to 5 are not necessary parties and prayed for dismissal of the said application. The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on record, dismissed the application.

4. Against the said order dated 10.08.2012, made in I.A.No.490 of 2012 in O.S.No.298 of 2008, the present civil revision petition is filed by the petitioners.

5. Heard the learned counsel appearing for the petitioners and respondents 3 to 5. Though notice was served on the first respondent and his name is printed in the cause list, there is no representation either in person or through counsel. The respondents 2, 6 to 10 were set exparte before the lower Court and the petitioners sought to dispense with the notice to the respondents 2, 6 to 10.

6. The petitioners 1 and 2 have admitted that they have not received full sale consideration and they have retained the possession of the suit property. Purchasers, pending suit are usually impleaded on the ground that party to the suit after selling the property will not take interest in conducting the case and interest of the purchaser will not be protected. The said principle is not applicable to the facts of the present case. In the present case, the petitioners 1 and 2 are yet to receive balance sale

consideration and they are still in possession of the suit property. The alleged sale in favour of the petitioners 3 to 5 is to be completed only after disposal of the suit. In view of the above facts, the petitioners 3 to 5 are not necessary and proper parties to the suit. According to the petitioners 1 and 2, they sold the property to the petitioners 3 to 5 in the year 2009 itself. The petitioners have filed application only in the year 2012, after their evidence has been completed and evidence on behalf of the respondents is in progress. The reason given by the petitioners 1 and 2 for filing the application belatedly is not a valid reason. In the above circumstances, the civil revision petition is not maintainable.

7. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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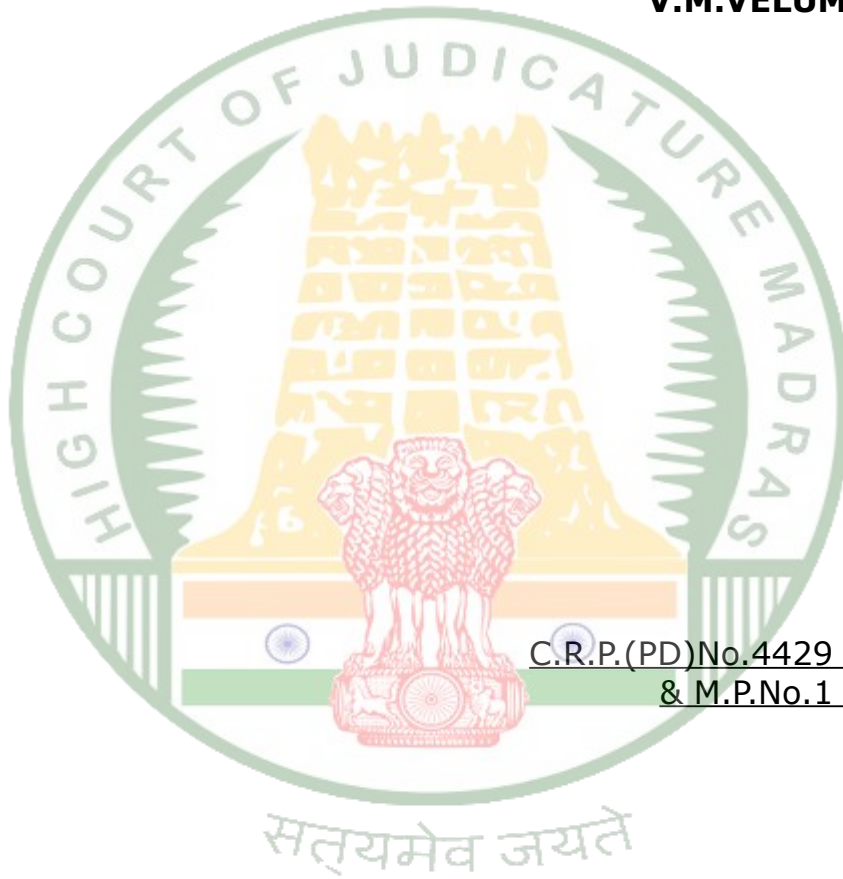
Index: Yes/No
gsa

To

The District Munsif,
Sankari.

V.M.VELUMANI, J.

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