

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

**C.R.P(PD)No.2087 of 2012
and
M.P.No.1 of 2012**

Malliga

...Petitioner

Versus

- 1.Arjunan
- 2.Rajendran
- 3.Manikkam
- 4.Chinnammal
- 5.Kamala
- 6.The Sub Inspector of Police,
Pallapatti Police Station,
Salem.
- 7.Commissioner of Police,
(Crime Branch),
Salem.
- 8.Joint Sub Registrar No.III,
(West), Salem.
- 9.District Registrar,
Salem.
- 10.A.Maheswari

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order dated 13.03.2012 passed in I.A.No.712 of 2011 in O.S.No.485 of 2010 on the file of the Principal Subordinate Court, Salem.

For Petitioners : Mr.P.Jagadeesan
For Respondents - 1 to 5 : Not claimed
Respondents - 6 to 9 : No Appearance
Respondent - 10 : Mr.V.P.Sengottuvel

ORDER

This Civil Revision Petition is filed challenging the order of the learned Principal Subordinate Judge, Salem in I.A.No.712 of 2011 in O.S.No.485 of 2010, in and by which the learned Principal Subordinate Judge had dismissed the Application moved by the plaintiff/revision petitioner to implead respondents 6 to 10 herein as defendants 6 to 10 in the main suit. The suit O.S.No.485 of 2010 has been filed by the revision petitioner for the following reliefs:

"(a) permit the petitioner/plaintiff to file this petition/plaint inform a pauperis holding that the petitioner/plaintiff is an indigent person holding that she is unable to pay the prescribed court fees prescribed by law upon the plaint and

(b) Cancelling or setting aside the sale deed dated 22.02.2008 bearing document No.427 of 2008 executed by the petitioner/plaintiff in favour of the respondents/defendants 1 to 3 herein in respect

of the properties described hereunder.

(c) cancelling or setting aside the release deed dated 18.10.2007 bearing Document No.2017/2007 executed by the respondents/defendants 1 to 3 in favour of the petitioner/plaintiff."

2. It is case of the revision petitioner that these two documents that have come into existence are tainted with fraud and coercion indulged into by the respondents 1 to 5 herein, who are brothers and sisters of the revision petitioner using the help of the proposed parties. The written statement was filed by the first defendant which was adopted by the other defendants wherein this statement of fraud and coercion has been denied and they had contended that the document has been executed on the free will and volition of the revision petitioner.

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3. To the written statement, the revision petitioner had filed a reply statement on 18.09.2011 wherein she had named the proposed respondents as parties who had coerced her into executing the documents. With these reasons, the revision

petitioner come forward with an impugned Interlocutory Application in I.A.No.712 of 2011 and the reasons for filing the same has been stated in paragraph No.4 of the affidavit filed in support of the petition. The same is extracted hereinbelow:

"When the respondents 1 to 5 and rowdy elements put up a live fence around my residential house I sought the help of Pallapatti Police, Salem - 5 and the police also refused. Further I have filed a writ petition to initiate the criminal action against the respondents and their rowdy elements late on the orders passed by the High Court in Writ Petition. The pallapatti Police filed F.I.R and closed the same unjustifiably at the instance of Umamaheswari, daughter of Ex.Minister of Veerapandi Arumugam. All the proposed parties are to be impleaded so as to get the adjudication disputes involved in the suit. Strangely the respondents 1 to 5 neither denied nor filed any statement for all these collusive and fraudulent transactions."

The tenth respondent herein had filed a counter affidavit against the said impugned Application.

4. The learned Principal Subordinate Judge, Salem by his order dated 13.03.2012 had dismissed the said Application on

the ground that the petitioner could have very well included the parties in the plaint itself and that it is not the case of the revision petitioner that she had come to know about the collusion only after the filing of the suit. The learned Judge has held that they are not necessary parties since there is no decree sought to be passed against them. This order is taken on revision to this Court.

5. Heard Mr.P.Jagadeesan, learned counsel for petitioner and Mr.V.P.Sengottuvel, learned counsel for tenth respondent.

6. The learned counsel appearing for petitioner would submit that even in the plaint, they have made a reference to the fact that the documents had come into existence by coercion and undue influence and also referred to the fact that the defendants are persons with political background which fact has been stated with more clarity in the reply statement and therefore, the learned Judge ought to have allowed the Application.

7. The learned counsel appearing for the tenth respondent would contend that absolutely no averments had been made in the plaint whatsoever about the fraud that has committed by the proposed parties who are neither necessary nor proper parties since there is no relief that has also been claimed against them. In support of his argument, he would rely on the judgment, ***Kasturi Vs. Iyyamperumal and Ors.*** reported in **(2005) 6 SCC 733.**

8. Heard both sides and perused the records.

9. It is clear that the impugned Interlocutory Application is filed only for buttressing the pleadings in the plaint. There is no relief that is sought to be made against the proposed parties since the main relief is only against respondents 1 to 5 herein. The acts alleged were also against respondents 1 to 5 herein and the allegation is that respondents 1 to 5 had sought the help of respondents 6 to 10 to put their plan into action. In the said circumstances, the revision petitioner has to prove the fact by letting in evidence. Therefore it well within the

right of the revision petitioner to summon the proposed parties as witnesses. Therefore, I find no infirmity in the order of the learned Principal Subordinate Judge, Salem.

10. In the result, this Civil Revision Petition is dismissed and the order passed by the learned Principal Subordinate Judge, Salem in I.A.No.712 of 2011 in O.S.No.485 of 2010 dated 13.03.2012 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

10.10.2018

mrr

Index: Yes/No

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To
The Principal Subordinate Court,
Salem.

P.T.ASHA, J.,

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