

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1901 of 2016 and C.M.P.No.9900 of 2016

1 Mariamal
2 Shanmugavalli @ Kaveri ... Petitioners/Proposed Defendants

Vs.

1 M.Chelvi ... Respondent/Plaintiff
2 N.Sengottuvelu ... Respondent/Defendant

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 28.03.2016 made in I.A.No.950 of 2015 in O.S.No.156 of 2012 on the file of the Subordinate Judge, Sankari.

For Petitioners : Mr.C.Munusamy
For Respondent No.1 : Mr.N.Manokaran
For Respondent No.2 : No appearance

ORDER

The first respondent herein has filed a suit in O.S.No.156 of 2012 alleging that the second respondent has borrowed a sum of Rs.1,75,000/- by mortgaging the suit property and the mortgage deed was registered before the

Sub Registrar, Edappai on 12.7.2005. Now, the first respondent has filed the suit for recovery of money with the strength of mortgage deed. Originally, the suit property was allotted to the first petitioner's husband by way of partition deed, dated 30.10.1981 between his father and brothers. Nallathambi, father of the defendant/second respondent herein died intestate on 3.7.2004 leaving behind his wife, daughters, petitioners herein and two sons namely Rajendran and Senguttuvelu, the second respondent herein. Since the suit property is ancestral property, the second respondent has no right to mortgage the property on his own without the knowledge of the petitioners herein and other coparcener. However, the second respondent is trying to snatch away the entire property with the connivance of the first respondent. Further, the petitioners have filed a suit for partition in O.S.No.75 of 2014 for the very same property and the same is pending before the very same court. However, the trial court erroneously dismissed the application. Hence, the petitioners have filed the present Civil revision petition before this Court.

2 According to the learned counsel for the petitioner, petitioners are also having right over the suit property. Therefore, they are necessary parties in the aforesaid suit. In order to avoid multiplicity of proceedings, the petitioners are necessary parties in the present suit.

3 Per contra, the learned counsel for the respondent/defendant would submit that the first respondent/defendant mortgaged the property, the petitioners are not necessary parties in the present suit. According to the counsel for the respondent/defendant to decide whether the petitioners are necessary parties in the suit, the doctrine of dominus litus would attract in the present case.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5 A perusal of record shows that the petitioner has filed a suit in O.S.No.75 of 2014 for partition and the same is pending. The present suit is filed by the first respondent for recovery of money on the basis of mortgage deed. Hence, in order to avoid multiplicity of proceedings, the petitioners are necessary parties in the present suit. According to the learned counsel for the respondent, the petitioners have not produced any documents before the court below to claim right over the suit property. Whether the petitioners are having right over the suit property or not can be decided at the time of trial. The objection raised by the respondent in the present revision, can be raised at the time of trial in the suit. Therefore, at this stage, the petitioners are also necessary parties in the suit.

D.KRISHNAKUMAR,J.

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6 In view of the above, this Court is inclined to pass the following order:

(i) The impugned order passed by the learned Subordinate Judge, Sankari in I.A.No.950 of 2015 in O.S.No.156 of 2012 is set aside.

(ii) Both the counsel for the parties undertake to cooperate with the court below for disposal of the suit in O.S.No.156 of 2012 within a time that may be fixed by this court.

(iii) Since the suit is of the year 2012, the learned Subordinate Judge, Sankari is directed to dispose of the suit in O.S.No.156 of 2012 on or before 30.6.2018.

7 The Civil revision petition is allowed with the above directions. No costs. Connected miscellaneous petition is closed.

13.02.2018

Speaking/Non Speaking order

Index: Yes/No

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To

The Subordinate Judge, Sankari

C.R.P.(PD) No.1901 of 2016
and C.M.P.No.9900 of 2016



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