



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.10.2018

DELIVERED ON : 20.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) Nos. 1465 and 1466 of 2015

and

M.P. (MD) Nos. 1 and 1 of 2015

Minor. T. Sakthi,
Rep. By his natural friend and
Natural guardian
and mother G. Rohini .. Petitioner/Petitioner /Plaintiff in both
C.R.Ps.

Vs.

1. Arukkani
2. M. Dharmalingam
3. K. Manivannan .. Respondents/Respondents/Defendants in both
C.R.Ps.

Common Prayer : These Civil revision petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 11.07.2014 and 01.08.2014 made in I.A. Nos. 294 and 295 of 2014 in O.S. No. 273 of 2010 on the file of the learned Principal District Munsif, Karur.

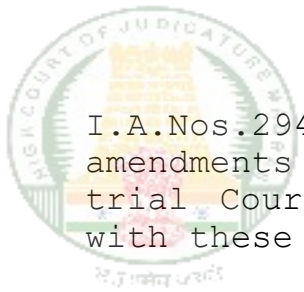
For Petitioner (in both C.R.Ps.) : Mrs. Prabhu for Mr. S. Gokul Raj
For Respondents (in both C.R.Ps.): Mr. V. Balaji

COMMON ORDER

Heard Mrs. Prabhu, learned counsel appearing for the petitioner and Mr. V. Balaji, learned counsel appearing for the respondents.

2. These petition have been filed against the fair and decreetal order made in I.A. Nos. 294 and 295 of 2014 in O.S. No. 273 of 2010 dated 11.07.2014 and 01.08.2014 on the file of the learned Principal District Munsif, Karur.

3. The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner has filed a suit in O.S. No. 273 of 2010 before the learned District Munsif, Karur for a prayer of dividing the suit property and to allot $\frac{1}{4}$ share to the petitioner herein. The petitioner has filed petitions in



I.A.Nos.294 and 295 of 2015 to reopen the case for carrying out the amendments in the plaint and the petitions were dismissed by the trial Court. Against the orders, the petitioner has come forward with these petitions.

4.On the side of the petitioner, it is stated that during the time of argument, it is stated that the respondents had contended that the sale deeds dated 02.04.2009 and 29.06.2009 are not challenged by the petitioner and that another contention of the respondents is that the sale deeds are binding upon the right of the minors. The petitioner wanted to carry out amendments with regard to these aspects and has filed these petitions. The petitioner filed petitions to reopen the case and to amend the plaint and both the petitions were dismissed by the trial Court. The petitioner prayed to set aside the orders passed by the trial Court and allow these petitions.

5.On the side of the respondents 2 and 3, it is stated that the affidavit was filed by the petitioner/plaintiff on 21.04.2014 and even in the affidavit, the respondents have stated that there is no prayer in the plaint to declare the sale deeds as null and void. Only after three years from the date of filing of written statement, the petitioner has come forward with these petitions. After the completion of the entire trial and even after the completion of arguments, the petitioner has come forward with these petitions only with the motive to drag on the proceedings and the second respondent herein has sold the property on behalf of the minor and the sale deeds were executed in favour of the third respondent herein are valid. These petitions has been filed after the suit was reserved for Judgment which was rightly dismissed by the trial Court and these petitions are liable to be dismissed.

6.On the side of the petitioner, it is stated that the petitioner is a minor and he is represented by his mother. The second respondent is the father of the minor. He sold the property without the knowledge of the minor. If the petitions are not allowed, the rights of the minor will be affected.

7.On the side of the respondents, it is stated that the defendants 2 and 3 filed their written statement in the year 2010. In the both written statement, it is clearly stated that the suit is not maintainable as no prayer is sought for to declare the sale deeds in favour of the defendants 2 and 3 as null and void. Only after four years from the date of knowledge of this contention, the petitioner has come forward with these petitions to fill up the lacuna. This amendment will change the nature and character of the case. These petitions have not shown any due diligence. In support of his contention, the Judgment passed by the Hon'ble Supreme Court in the case of Mari and another v. K. Subramani reported in 2014 (1) CTC 696 is cited.

<https://hcservices.ecourts.gov.in/hcservices/>

8.A perusal of the records reveals that the suit was filed by



the minor represented through his mother. It seems that the second respondent herein who is the father of the minor has executed two sale deeds in favour of the third respondent herein. The contention of the petitioner is that the second respondent herein has tried to encumber the property including the share of the minor. The contention of the respondents is that these petitions are filed only after four years from the date of knowledge and these amendment will change the character of the suit. The findings of the lower Court is that these petitions were filed only after the filing of the written argument on the side of the defendants. No other reasons are discussed in the trial Court. The written statement was filed in the year 2010 but even then the petitioner has not taken steps to amend the pleadings. The petitioner being a minor should be given an opportunity to put forth his case. Whether the second respondent herein has executed sale deeds for the welfare of the children or against the welfare of the children is to be decided after the trial.

9. In the plaint, in paragraph no.8 it is stated that "if at all any encumbrance is created over the suit property, including the petitioner's share, such kind of transfer and encumbrance will not affect the petitioner's right". In the above circumstances, carrying out the amendment will not change the character of the case and the prayer sought for is only to reopen and to amend the plaint and no prejudice will be caused to the respondents in allowing these petitions. The respondents are entitled to recall and cross-examine the witness if necessary.

10. Hence, these Civil Revision petitions are allowed by setting aside the orders passed in I.A.Nos.294 and 295 of 2014 in O.S.No.273 of 2010 on the file of the learned Principal District Munsif, Karur. No Costs. Consequently, M.P.(MD)Nos.1 and 1 of 2015 are closed.

Sd/-

Assistant Registrar(cs-II)

/True Copy/

Sub Assistant Registrar(cs-III)

To

1. The Principal District Munsif, Karur.

+1cc to M/S.S.Gokul Raj Advocate in SR.No.96174

+1cc to Mr.V.Balaji Advocate in SR.No.96541

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