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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2712 of 2015

and

M.P. (MD) No.1 of 2015

1. Rajeswari
2. R.Chithiraikani ... Petitioners/Petitioners/Defendants 3 & 4

-vs-

- 1.D.Gurusamy ... 1st Respondent/1st Respondent/Plaintiff
- 2.P.Guruvaiah ... 2nd Respondent/2nd Respondent/1st Defendant
- 3.The Tahsildhar,
Srivilliputhur Taluk,
Virudhunagar District. ... 3rd Respondent/3rd Respondent/
2nd Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the entire records pertaining to the order dated 09.10.2015 passed in I.A.No.1054 of 2015 in O.S.No.152 of 1997 pending before the learned Principal District Munsif, Srivilliputhur, Virudhunagar District and set aside the same.

For Petitioner : Mr.S.Manickam

For R1 : No Appearance

For R2 : Mr.M.Ashokkumar

For R3 : Mr.Aayiram K.Selvakumar
Addl. Govt. Pleader

O R D E R

The revision petitioners are the defendants 3 & 4 in O.S.No.152 of 1997 on the file of the learned Principal District Munsif, Srivilliputhur, Virudhunagar District and in the suit, the plaintiff sought for declaration among various other reliefs. During pendency of the suit, the revision petitioners took out an application in I.A.No.1054 of 2015 for transposing them as the plaintiffs in the suit and the said application was dismissed by the Trial Court on the ground that it was the petitioners, who had earlier filed an application for impleading them as defendants in the suit and therefore, the request of the petitioners cannot be acceded to. Aggrieved by such dismissal, challenging the same, the petitioners / defendants are before this Court.



2. It is the case of the revision petitioners that they purchased about 18 cents of land from out of the suit schedule properties from the plaintiff and at the time of purchase, it was not known to them that the plaintiff had been in possession of the property. The plaintiff had filed the suit seeking declaration of the suit schedule properties in respect of himself and the revision petitioners. It is the further case of the petitioners that since a plea was raised by the 1st defendant that after sale of the property to the revision petitioners herein, the plaintiff cannot ask for such relief for himself as well as for the petitioners herein, it is incumbent upon the petitioners herein to sue against the defendants in the capacity as plaintiffs and hence, they have to be transposed as plaintiffs 2 & 3 in the suit.

3. The revision petitioners state that while effecting the sale of properties, the plaintiffs did not show the properties purchased by the petitioners herein and therefore, it cannot be accepted that the entire properties belong to both the plaintiffs and the revision petitioners herein. Unless they are transposed as plaintiffs 2 & 3, much prejudice would be caused to them, as they were inadvertently added as opposite parties instead of showing them as the plaintiffs.

4. Learned counsel for the 2nd respondent has contended that the revision petitioners, having failed to oppose their impleadment as defendants in the suit, have now come forward with the application for transposition. Moreover, when the plaintiff had filed an application for amendment to modify to the effect that the suit schedule property belongs to the plaintiff and the defendants 3 and 4, no objection was raised by the revision petitioners and as such, the present petition is not maintainable and the same is liable to be dismissed.

5. Heard the learned counsel for the petitioners, learned counsel for R2 and the learned Additional Government Pleader appearing for R3. There is no representation on behalf of R1 and this Court perused the material documents available on record.

6. The revision petitioners have invoked the provisions of Order I Rule 10(2) for their transposition as plaintiffs 2 and 3 instead of defendants 3 and 4, on the ground that after sale of properties, the plaintiff cannot claim rights over the same in the capacity of co-owners and the said application was disallowed by the Trial Court by citing commencement of trial. It was stated in the plaint itself that certain portion of lands was sold to the revision petitioners herein and therefore, it can easily be construed that the joint claim made by the plaintiff is ~~not maintainable~~ and a plea was also raised in this regard by the 1st defendant.



7. It is opt to mention here that the suit is of the year 1997 and if the transposition sought is not allowed, it will certainly create havoc at the time of execution proceedings and there will be a possibility of further delay in giving quietus to the issue

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8. It is seen that the petitioners have narrated innumerable reasons to substantiate their argument for their transposition as the plaintiffs 2 and 3 in the suit. A perusal of the order of the Trial Court would go to show that the plaintiff had not filed any counter even before the Court below and also in this petition. Hence, it can be assumed that the plaintiff has no serious objection in such transposition and therefore, finding much force in the contention raised by the learned counsel for the petitioners and to meet out the ends of justice, this Court is of the view that the order of the Trial Court is liable to be set aside.

9. In the result,

a) this Civil Revision Petition is allowed and the order dated 09.10.2015 passed in I.A.No.1054 of 2015 in O.S.No.152 of 1997 by the learned Principal District Munsif, Srivilliputhur, Virudhunagar District, is hereby set aside;

b) the learned Principal District Munsif, Srivilliputhur, Virudhunagar District is directed to transpose the revision petitioners as plaintiffs 2 and 3 in the suit and dispose of the suit within a period of three months from the date of receipt of a copy of this order, without giving any unnecessary adjournment to either parties and the parties shall also cooperate for early disposal of the suit within the stipulated period prescribed above.

c) It is made clear that whatever observed above is only for the purpose of deciding this petition alone and the Trial Court shall proceed with the trial on merits and in accordance with law, being uninfluenced by anything stated herein-above and in I.A.No.1054 of 2015.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

<https://hcservices.gov.in/csp/csp/> District Munsif,
Srivilliputhur,
Virudhunagar District.



2. The Tahsildhar,
Srivilliputhur Taluk,
Virudhunagar District.

+1cc to Mr.M.Ashokkumar, Advocate Sr.No.73623
+1cc to Mr.S.Manickam, Advocate Sr.No.73624

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VB/SV/SAR2/11.09.2018/4P/5C

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