



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1056 of 2018 and
C.M.P. (MD) No.4556 of 2018

1. Marimuthu
2. Rajagopal
3. Minor R.Dinesh

Rep. by 2nd petitioner and next friend

... Revision Petitioners /
Petitioners/3rd parties/3rdparties
-vs-

1. Mariammal
2. Narayanan
3. Murugan

... 1st Respondent/Petitioner/
1st Respondent/Plaintiff
... Respondents 2&3 / Respondents 2& 3/
Respondents 2& 3/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order and decreetal order dated 06.03.2018 made in I.A.No.37 of 2018 in I.A.No.2177 of 2011 in O.S.No.125 of 2007 on the file of the Principal District Court, Tuticorin and pass such further or other orders as this Hon'ble Court may deem and proper in the facts and circumstances of the case.

For Petitioners : Mr.S.Siva Thilakar

O R D E R

The plaintiffs had filed O.S.No.125 of 2007 on the file of the Principal District Court, Tuticorin for partition and separate possession, etc. and the said suit was decreed on 14.09.2009 in favour of the plaintiffs and a preliminary decree was also passed. Thereafter, since no appeal was filed against the said order, the plaintiffs had filed I.A.No.2177 of 2011 for appointment of an Advocate Commissioner for effecting partition, which was also ordered on 25.07.2017. While so, the revision petitioners herein, who are third parties to the suit had subsequently filed I.A.No.37 of 2018 for impleading them as parties to the suit before passing a final decree and the said application was dismissed by the Trial Court on the ground that the application was filed with an intention to prevent the Court from passing a final decree. Aggrieved by the same, the revision petitioners are before this Court.



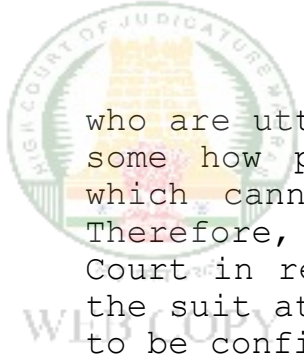
2. It is the case of the revision petitioners that the suit schedule property originally belonged to one Vel Konar and his wife / 1st respondent and the same was subsequently mortgaged so as to purchase 4 cents of land jointly and with the hard labour of the family members. Pursuant to the difference of opinion between the petitioners and the 2nd plaintiff, they lived separately, but however, the petitioners are entitled to their share in the property. The revision petitioners had filed a suit in O.S.No.103 of 2016 claiming share in the property and the plaintiffs, without adding the revision petitioners as parties, obtained an order in their favour.

3. The revision petitioners state that as per Order 1 Rule 10(2) CPC, the Court may at any stage of the proceedings strike of the plaint, which has been filed without adding necessary parties for effective adjudication and settle the entire disputes by involving itself necessary questions and the Trial Court, without doing so, had simply dismissed the application, thereby causing much prejudice to the revision petitioners. Contending that no prejudice would be caused to the other side, in the event of the petition being allowed, it is prayed that the order of the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioner and the notice to other side is dispensed with, in view of the nature of disposal of this case. This Court also perused the material documents available on record.

5. Admittedly, the plaintiffs have already obtained an order from the Civil Court in their favour and it is also not in dispute that no appeal has yet been preferred against the said judgment and decree. Therefore, it could be inferred that the decree had attained finality and the plaintiffs had also filed an application for appointment of an Advocate Commissioner so as to find out the bounds and metes for effecting partition, which was also allowed by the Trial Court. While so, the revision petitioners have filed the application for their impleadment in the suit, which can be merely construed as nothing, but an effort to curtail the Trial Court to pass a final decree. The contention of the revision petitioners that they were not aware of the pendency of the suit cannot be accepted by any stretch of imagination, as the suit is of the year 2007 and they have also admitted the filing of the subsequent suit in O.S.No.103 of 2016, seeking the relief of partition.

6. It is true that Order 1 Rule 10(2) can be invoked by the Trial Court at any stage of proceedings, but not at the whims and fancies of the parties and the plaintiffs had clearly established their case before the Trial Court to the extent that the suit schedule property was not purchased jointly, whereas it was purchased by selling the 1st plaintiff's jewels and out of her savings. When the defendant in the suit had not chosen to file an appeal against the judgment in the suit, the revision petitioners,



who are utterly strangers to the suit, have filed the application to some how prevent the Trial Court from passing the final decree, which cannot be permitted, that too, after such a long period. Therefore, this Court is of the view that the order of the Trial Court in refusing to implead the revision petitioners as parties to the suit at this very distant stage is perfectly valid and is liable to be confirmed.

7. In the result,

a) this civil revision petition is dismissed, confirming the order dated 06.03.2018 made in I.A.No.37 of 2018 in I.A.No.2177 of 2011 in O.S.No.125 of 2007 by the learned Principal District Judge, Tuticorin.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar(CS-II)

To:

1. The Principal District Judge,
Tuticorin.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.S.Siva Thilakar, Advocate, SR.No.68483.

C.R.P. (PD) (MD) No.1056 of 2018

13.06.2018

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RAM/SKN RSK/SAR 2/23.07.2018/3P/5C