



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2018

Pronounced on : 30.07.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1626 of 2017
and C.M.P. (MD) No.9167 of 2017

1. Sumathi
2. Mahalakshmi

... Revision Petitioners/Petitioners/
Defendants 4 & 5

-vs-

1. Jeyabal
2. Aasaithambi
3. Duraipandi
4. Gnanasundaram

... 1st Respondent/Plaintiff

... Respondents 2 to 4/Defendants 1 to 3

(R2 to R4 not pressed on 12.06.2018)

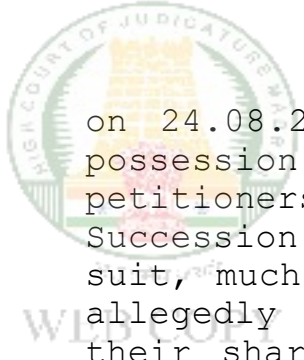
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the Fair Order and Ex-order in I.A.No.207 of 2017 in O.S.No.182 of 2012 dated 05.09.2017 passed by the Principal District Munsif, Manamadurai and allow this Revision Petition.

For Petitioners : Mr.V.Lakshmanan
For R1 : Mr.R.Udhaya Kumar

O R D E R

The revision petitioners are the defendants 4 and 5 in the suit in O.S.No.182 of 2012 on the file of the Principal District Munsif Court, Manamadurai and in the suit, the plaintiff / 1st respondent herein had sought for recovery of possession, etc. During pendency of the suit, the revision petitioners / proposed defendants 4 & 5 had filed an application in I.A.No.207 of 2017 for impleading them as parties to the suit and the said application was dismissed by the Trial Court on the ground that the same was filed belatedly. Challenging the said order, the petitioners are before this Court.

2. It was the case of the revision petitioners that they are the daughters of the 3rd defendant in the suit and the
<https://hse.servecis.courts.gov.in/hse.servecis> petitioners were aware of the fact that the suit schedule property is an ancestral property, had purchased the same from their father

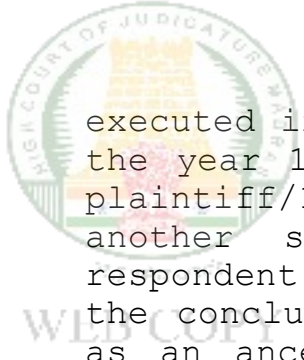


on 24.08.2009 and subsequently, filed the suit for recovery of possession from the lease. It was the further case of the petitioners that they have shares in the property under the Hindu Succession Act and unless they are added as defendants in the suit, much prejudice would be caused to them, as the property was allegedly purchased from their father alone without considering their shares in it. Though the patta stands in the name of one Deiva Sikani, who was the maternal uncle of their father and lived jointly under the same roof, the property was under the possession and enjoyment of the petitioners' father. Contending that the plaintiff had admitted in his cross examination that the suit schedule property is an ancestral property, which itself is sufficient to prove their case and numerous records were placed for perusal to establish their, it is prayed that the order of the Trial Court is liable to be set aside and the revision petitioners must be impleaded as defendants 4 & 5 in the suit so as to render substantial justice to the affected parties.

3. Per contra, learned counsel for the plaintiff / 1st respondent herein has strenuously contended that the suit property originally belonged to the maternal uncle of the 3rd defendant in the suit and his maternal uncle had sold certain portions of the land to one Pottai Ammal, who in turn sold the same to the plaintiff / 1st respondent herein. Subsequently, the said maternal uncle had executed a Will in respect of the balance portion of the land in favour of the father of the petitioners and therefore, it cannot be said that the property is an ancestral property. In the meanwhile, the 2nd respondent had wrongly obtained patta in respect of the land belonging to the plaintiff and the revenue proceedings were ordered to be kept in abeyance till the disposal of the suit. It was further contended that the entire cents of land were sold out by the maternal uncle of the father of the petitioners way back in the year 1994 itself, namely, before introduction of the provisions of the Hindu Succession Act and thus, by any stretch of imagination, it cannot be said that the property is an ancestral property. The main intention of the petitioners is to grab money from the 1st respondent, by suppressing several facts relating to the issue.

4. Heard the learned counsel for the petitioners and the learned counsel appearing for R1. This Court also perused the material documents available on record.

5. The petitioners have invoked the provisions of Order 1 Rule 10(2) of CPC for impleading them as defendants 4 and 5 in the suit. The main issue to be decided in this case is as to whether the petitioners are really necessary parties to the suit on the basis of their claim that the suit schedule property is an ancestral property, when their father was already a party to the suit as 3rd defendant. A perusal of the order of the Trial Court would show that it gave much reliance on Ex.A1 / a sale deed



executed in the name of one Pottai Ammal by Deiva Sikamani during the year 1994 itself, which was marked during examination of the plaintiff/1st respondent as P.W.1 in the suit and also Ex.A2 / another sale deed executed in favour of the plaintiff/1st respondent by the said Pottai Ammal on 23.06.2010 for coming to the conclusion that the property in entirety cannot be construed as an ancestral property of the petitioners. As rightly relied upon by the Trial Court, those documents would be prima facie sufficient to prove that the property is not an ancestral property, as the property had been transferred to the father of the petitioners from his maternal uncle and their father later on executed a sale deed in favour of the plaintiff/1st respondent herein. To say in brief, the maternal uncle of the father of the petitioners, as a token of gratitude for taking care of him in his last days, had settled his property to the father of the petitioners by way of a Will and the same was subsequently sold to the plaintiff.

6. To add further, it was also seen that the father of the petitioners had filed a suit in O.S.No.23 of 2003 against the 2nd and 3rd respondents herein for permanent injunction, which ended in dismissal on the ground that the said respondents are mortgagees and on the basis of the observation of the Court, the plaintiff / 1st respondent had instituted the suit for redemption of mortgage. The submission of the petitioners that their father did not give any power to the plaintiff for redemption of mortgagee cannot be accepted, because their father / 4th respondent herein / 3rd defendant had executed a mortgage deed in favour of the respondents 2 and 3 and during its existence, sold the same to the plaintiff / 1st respondent herein and therefore, no necessity arose for the plaintiff to deal with the property in the manner known to law. For the sake of argument, if it is concluded that the petitioners are necessary parties to the suit, then the entire pleadings ought to be restructured in terms of the issue raised by them.

7. Moreover, it was not the case of the petitioners that they were not in cordial terms with their father during the transactions between their father and the plaintiff. In addition to the above, the suit was not filed for declaration of title or determination of rights of legal heirs and therefore, the applicability of the relevant provisions of Hindu Succession Act need not be gone through in this case. Admittedly, the suit was filed in the year 2012 and the application for impleadment was filed after a lapse of nearly five years, that too, after examination of certain witnesses, which draws inference to this Court that the application was filed only to drag on the proceedings so as to get some benefits out of it and create cloud

<https://hccasesonline.gov.in/hccases>

8. In view of what is stated hereinabove, this Court is



of the view that the Trial Court had gone into all the material aspects and arrived at a just decision, which does not whatsoever warrant any interference by this Court and the said order is liable to be upheld, more specifically reiterating once again that the petitioners are not necessary parties to the suit.

WEB COPY

9. In the result,

a) the civil revision petition is dismissed, confirming the order dated 05.09.2017 passed in I.A.No.207 of 2017 in O.S.No.182 of 2012 by the learned Principal District Munsif, Manamadurai;

b) the Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order, by conducting the trial of the suit on day-to-day basis without giving any unnecessary adjournments to either parties and the parties shall also extend their full cooperation for disposal of the suit in time as indicated above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1.side)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

1.The Principal District Munsif,
Manamadurai.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

AR

TE/RSK/SAR-4 : 31/08/2018 : 4P/4C

ORDER IN
C.R.P. (PD) (MD) No.1626 of 2017
30.07.2018