



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) No.1759 of 2011

and

M.P. (MD) No.1 of 2011

1. Petchimuthu

2. Chidambaram

... Petitioners

-Vs-

Mariammal

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to Revise and set aside the order passed in I.A.No.86 of 2011 in O.S.No.18 of 2003 before the Principal District Munsif Court, Sankarankoil dated 18.02.2011.

For Petitioners: Mr.S.Ramesh Alias Ramiah

For Respondent : No Appearance

ORDER

When this matter came up for hearing on 12.09.2011, this Court ordered notice of motion returnable by four weeks and passed an order of interim stay. Though notice was served to the sole respondent on 28.09.2011, the respondent has not appeared either in person or through representative before this Court. Under that circumstances, this matter was again listed on 10.09.2018. On that date, the learned counsel appearing for the petitioners was present. Due to non-appearance of the learned counsel appearing for the respondent, this matter was adjourned after one week and the same is listed today i.e., 17.09.2018.

2.Today, when the matter is taken up for hearing, the learned counsel appearing for the petitioners is present. None appears on behalf of the respondent, though her name is printed in the cause list.

3.Heard Mr.S.Ramesh Alias Ramiah, learned counsel appearing for the petitioners.

4.This Civil Revision Petition has been filed, challenging the order dated 18.02.2011 made in I.A.No.86 of 2011 in O.S.No.18 of 2003 by the learned Principal District Munsif Court, Sankarankoil.

5.It is the case of the petitioners that O.S.No.18 of 2003 was filed by the respondent herein before the Principal District Munsif Court, Sankarankoil, seeking for declaration and for



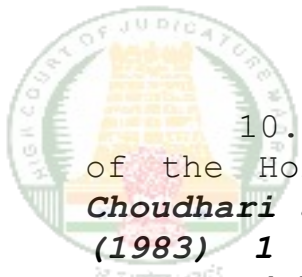
permanent injunction against the second petitioner, who is the vendor of the first petitioner and in similar manner the petitioners herein also filed O.S.No.112 of 2007 against the respondent herein, seeking for declaration and for permanent injunction. In both suits, the subject matter of the property is one and the same. O.S.No.18 of 2003 was dismissed by the learned Principal District Munsif Court, Sankarankoil and O.S.No.112 of 2007 was decreed by the Sub Court, Sankarankoil as prayed for.

6. Aggrieved by the order of the dismissal passed in O.S.No.18 of 2003, the respondent preferred an appeal in A.S.No.165 of 2004 and the petitioners preferred an appeal in A.S.No.170 of 2014 before the First Appellate Court. The First Appellate Court dismissed A.S.No.165 of 2004 and allowed A.S.No.170 of 2014. Aggrieved by the same, the respondent herein preferred Second Appeals before this Court in S.A.(MD)Nos.587 and 1206 of 2008. These appeals were allowed, by order dated 19.12.2009, remanding the matter for the purpose of proper measurement of east-west of scheduled property and thereafter, to dispose of the suit by the Lower Court. Therefore, now the matter is pending before the Lower Court as on date.

7. Under these circumstances, Since the first petitioner was not aware of those disputes, he purchased the property immediately after dismissal of A.S.Nos.165 and 170 of 2004 by the First Appellate Court, but before filing of the second appeals i.e., on 12.01.2008.

8. Under these circumstances, the petitioners herein preferred I.A.No.453 of 2010 in O.S.No.112 of 2007 and I.A.No.86 of 2011 in O.S.No.18 of 2003 before the Principal District Munsif Court, Sankarankoil. After filing counter statement by the respondent in I.A.No.453 of 2010 in O.S.No.112 of 2007, the Principal District Munsif Court, Sankarankoil allowed I.A.No.453 of 2010, since the purchaser has to be impleaded by referring the judgment of this Court in the case of **V.Ravimenon Vs. R.Ebinesar and others** reported in **2009(1) CTC 775**. The case of the petitioners herein is that the subject matter of the property is one and the same in both suits, however, the Principal District Munsif Court, Sanakarnkovil, dismissed I.A.No.86 of 2011 in O.S.No.18 of 2003 and allowed I.A.No.453 of 2010 in O.S.No.112 of 2007.

9. The case of the petitioners is that they filed an application under Order 1 Rule 10(2) of C.P.C. for further impleadment of the first petitioner and made a submission that since the first petitioner purchased the property, he has to be impleaded as necessary party in the suit in order to establish his



10. In respect of his submission, he referred the judgment of the Hon'ble Supreme Court in the case of **Khemchand Shankar Choudhari and another Vs. Vishnu Hari Patil and others** reported in (1983) 1 SCC 18. The relevant portion of the judgment is extracted hereunder:-

WEB COPY

"...It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard..."

11. He also referred the judgment of the Hon'ble Supreme Court in the case of **Savitri Devi VS. District Judge, Gorakhpur and others** reported in (1999) 2 MLJ SC 10, wherein it has been stated that Order 1 Rule 10 of C.P.C., enables the Court to add any person as party at any stage of the proceedings, if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit.

12. In view of the same, this Court finds some force in the arguments made by the petitioners. On hearing the submissions and on perusing the materials, this Court is of the view that the Lower Court was not justified in dismissing the petition to implead the first petitioner as one of the respondents, when the first petitioner was allowed to be implead in another suit of same subject matter in O.S.No.112 of 2007. It is purely non-application of mind by the Lower Court and it is clearly indicated that if the first petitioner has not been impleaded, it will amount to mischief. The Lower Court has not rendered proper justice. This Court has no hesitation to invoke the Article 227 of Constitution of India to allow the first petitioner to implead as one of the respondents. Therefore, the order passed by the Lower Court is set aside and the first petitioner is permitted to implead as one of the respondents in O.S.NO.18 of 2003.

13. In the result, this Civil Revision Petition is allowed. However, considering the fact that the suit is of the year 2003, the Lower Court is directed to dispose of the same, within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL-SIDE)

// True Copy //



To
The Principal District Munsif,
Sankarankoil.

WEB COPY

+1 CC TO MR.S.RAMESH ALIAS RAMIAH, ADVOCATE IN SR NO.84978

MYR

BU/PM/SAR-III :25.10.2018 : 4P/3C

C.R.P. (PD) (MD) No.1759 of 2011
17.09.2018