



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07 .03.2018
PRONOUNCED ON : 25 .09.2018

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THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CRP (MD) No.1166 of 2013 (NPD)
and
MP (MD) No.1 of 2013

1) N. Abdul Muthalif
2) A.M. Zahir Hussain
3) Z.H. Jesiya Jasmine
4) Minor Z.H. Rasool Beevi Petitioners 2 to 4/
Petitioners 2 to 4 /Proposed Plaintiff

versus

Gnana Sundari Respondent /Respondent /Defendant

Prayer : Civil Revision Petitioner filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 21.03.2013 made in I.A. No.476 of 2012 in O.S. No.181 of 2008 on the file of Sub Court, Theni.

For Petitioners : Mr.A. Arumugam
For Respondent : Mr.S.Sivathilakar

ORDER

This Civil Revision Petition has been preferred against the order passed in I.A. No.476 of 2012 in O.S. No.181 of 2008, filed by the petitioners 2 to 4 herein to implead them as plaintiffs 2 to 4 in the suit.

2. The suit was filed by the first petitioner herein for recovery of possession and to determine the mesne profits payable to the sole plaintiff as contemplated under Order XX Rule 12 of CPC.

3. The suit was contested by the sole defendant, who is the respondent herein, by filing a written statement.

4. Pending suit, the second petitioner herein, on his own behalf and on behalf of his two children, has filed an application in I.A. No. 476 of 2012 to implead himself and his two children as plaintiffs 2 to 4 in the suit. The second petitioner is the son of the first petitioner herein and petitioners 3 and 4 are the grand sons of the first petitioner herein. According to the petitioners 2 to 4 herein, pending the suit, the first petitioner has executed a



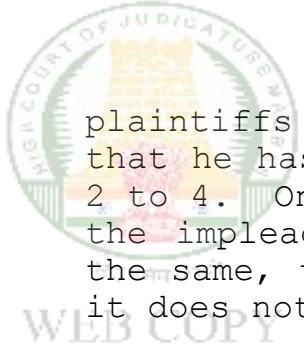
settlement deed dated 14.12.2011 in their favour in respect of the suit property and therefore, they, as owners of the property has to prosecute the suit filed by the first petitioner herein failing which they will be highly prejudiced.

5. The application in I.A. No. 476 of 2012 was resisted by the respondent/ defendant by stating that the settlement deed dated 14.12.2011 was executed by the first plaintiff/ first petitioner herein, pending the suit and such settlement deed is hit by the principles of lis pendence. Therefore, according to the respondent herein, the settlement deed, dated 14.12.2011 has no force of law as it has come into existence during the pendency of the suit. Therefore, the settlement deed dated 14.12.2011 will not confer any right to the proposed plaintiffs 2 to 4. The proposed plaintiffs 2 to 4 are not proper and necessary parties to the suit especially when the executor of the settlement deed, dated 14.12.2011, who is the sole plaintiff in the suit, can very well prosecute the suit on behalf of the proposed plaintiffs 2 to 4. The respondent/defendant therefore prayed for dismissal of the application.

6. The trial court, on consideration of the rival contentions, concluded that the sole plaintiff in the suit ought to have been shown as a respondent in the application so that he could file his objection, if any, to the relief sought for in the application but it was not done. Further, the sole plaintiff/first petitioner herein has filed an affidavit opposing his children to be brought on record as plaintiffs 2 to 4 in the suit. In any event, the settlement deed dated 14.12.2011 came into existence during the pendency of the suit and therefore, the Court below dismissed I.A. No. 476 of 2012 and refused to implead the petitioners 2 to 4 herein as plaintiffs 2 to 4 in the suit.

7. The learned counsel for the petitioners would vehemently contend that the first petitioner herein, who is the sole plaintiff in the suit, had executed a settlement dated 14.12.2011 and by virtue of the settlement deed, the petitioners 2 to 4 become entitled to the suit property. Therefore, if the petitioners 2 to 4 are brought on record as plaintiffs 2 to 4 in the suit, they will be in a position to effectively prosecute the suit. The Court below without considering the above aspects has dismissed the application and he prayed for allowing this Civil Revision Petition.

8. The learned counsel for the respondent would argue that the first petitioner herein, who is the sole plaintiff in the suit, is the father of the proposed second plaintiff and grand father of the proposed plaintiffs 3 and 4. They claimed to have derived title over the suit property on the strength of the settlement deed dated 14.12.2011 executed in their favour by the first petitioner herein. However, the first petitioner herein, who is the sole plaintiff in the suit, was not shown as respondent in I.A. No. 476 of 2012 and his objections were not called for. If really the first petitioner has executed the settlement deed in favour of the proposed



plaintiffs 2 to 4, he can very well file an affidavit expressing that he has no objection for impleadment of the proposed plaintiffs 2 to 4. On the contrary, he himself filed an affidavit objecting to the impleadment of the proposed plaintiffs 2 to 4 and considering the same, the Court below has rightly dismissed the application and it does not call for interference by this Court.

9. Heard the counsel for both sides. The petitioners 2 to 4 herein have filed an application to implead themselves as plaintiffs 2 to 4 in the suit on the strength of a settlement deed dated 14.12.2011 executed by the first petitioner. Merely because the first petitioner has executed the settlement deed, during the pendency of the suit, it will not confer any right to the petitioners 2 to 4 to get themselves impleaded in the suit as plaintiffs 2 to 4. The validity or enforceability of the settlement deed cannot be gone into at this stage and it can be considered only at the time of trial. Having regard to the above, the trial Court has rightly dismissed the application for impleading the petitioners 2 to 4 as plaintiffs 2 to 4 in the suit.

10. The learned counsel for the petitioners relied on the decision of the Honourable Supreme Court in the case of (Dhurandhar Prasad Singh vs. Jai Prakash University and others) reported in 2001 (3) CTC 422 to contend that the person, in whose favour an interest is created during the pendency of the suit, is entitled to get himself impleaded in the suit as a proper and necessary party. This decision cannot be made applicable to the present case. In that case, the plaintiff therein was terminated from service by the Governing Body Jaiprakash University and during the pendency of the execution proceedings an objection was raised on behalf of the University under Section 47 of CPC on the ground that during the pendency of the suit, Jaiprakash University has become a constituent unit of Bihar University and therefore, the decree passed against the erstwhile University cannot be enforced at the instance of the plaintiff in the suit and they sought for impleading themselves as party respondents. It is in those circumstances, the Honourable Supreme Court held that a right is created in favour of the proposed party to the suit and non-impleading them during the execution proceedings will adversely prejudice the interest created on them.

11. In the present case, the father, the first petitioner was arrayed as sole plaintiff and he is prosecuting the suit filed by him. When the father prosecutes the suit in respect of the suit property, whatever be the outcome of the suit will automatically bind his children or grand children and they need not come on record when their father is prosecuting the suit. Furthermore, during the pendency of the suit, he said to have executed a settlement deed dated 14.12.2011 and on the strength of the same, the petitioners 2 to 4 herein have filed the application to implead themselves as proposed plaintiffs 2 to 4 in the suit. Even assuming that a settlement deed dated 14.12.2011 has in fact been executed by the first petitioner, such settlement deed will have no bearing or



effect for prosecuting the suit by the first petitioner herein. In such view of the matter, I do not find any reason to interfere with the order passed by the trial Court. The Civil Revision Petition deserves only to be dismissed.

12. In the result, the Civil Revision Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar (CS-III)

To
The Subordinate Judge,
Subordinate Court
Theni.

Copy To:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+ 1 CC TO Mr.A.ARUMUGAM , ADVOCATE IN SR No. 86679.

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Judgment in
CRP (MD) No.1166 of 2013 (NPD)

25.09.2018