

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 18.11.2019

ORDER PRONOUNCED ON : 25.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.3497 of 2014

and

M.P.No.1 of 2014

Arumugam

Petitioner

Vs

1. Ramasamy (Died)
2. Marimuthu
3. Manimegalai
4. Ambika
5. Rajammal
6. Murugammal @ Sivagami
7. Saraswathi

Respondents

(R2 to R6 are legal heirs of the deceased first respondent vide Court order dated 20.09.2019 by RPAJ made in M.P.No.1 of 2014 in CRP (PD) No.3497 of 2014)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 08.08.2014 passed in I.A.No.414 of 2014 in O.S.No.114 of 2010, on the file of Principal District Munsif Court, Cheyyar.

For Petitioner : Mr.S.Mohan

For Respondents : R1 – Died
R2 to R7 – Mr.K.G.Senthil Kumar

ORDER

The 2nd defendant in OS No.114 of 2010 on the file of Principal District Munsif Court, Cheyyar is the petitioner herein. During the pendency of the above said suit, he has filed an application in IA No.414

of 2012 under Order 23 Rule 1(A) of CPC, seeking the relief to transpose the petitioner as 7th plaintiff. The learned Principal District Munisif, after affording opportunity to the respondent, for raising objection, by an order dated 08.08.2014 has allowed the application filed by the 1st respondent/first defendant.

2. Aggrieved over the same, the second defendant has filed this Civil Revision Petition and pleaded to set aside the order dated 08.08.2014.

3. Originally, the respondents 2 to 7 in this Civil Revision Petition has filed the suit in OS No. 114 of 2010 seeking the relief of declaration declaring that the sale deed executed by the 1st defendant in favour of the 2nd defendant is null and void. Further they prayed for the relief of partition.

4. The case of the plaintiffs before the trial court is that they are the sons and daughters born to the deceased 1st defendant. The suit schedule properties are the ancestral properties of the defendants. Before 29 years, they orally partitioned the suit properties. After made partition, the property measuring an extent of 0.13 cents was allotted in favour of 1st and 2nd defendants. For the said property, patta has also been issued in favour of the 1st defendant. However, by mentioning the false representation as the name has been changed in the patta, the 2nd

defendant after convening panchayat by misrepresentation executed a sale deed in favour of him as if the same was executed by the first defendant. Challenging the said sale, suit has been instituted by the respondents 2 to 8. Only in the said occasion, the first petitioner presented the application in IA No.1414 of 2004 with a prayer to transposing him as the 7th plaintiff and the same was ordered in favour of him.

5. Aggrieved over the same, the revision petitioner is before this Court with this Civil Revision Petition.

6. Today when the petition came up for hearing, the learned counsel appearing for the revision petitioner and the respondent are present. The learned counsel appearing for the petitioner/2nd defendant would contend that the sale deed was executed in the year of 2006, whereas the suit was filed in the year of 2010. Since the first defendant is not in a position to challenge the sale deed, because of the reason that the same was barred by limitation, colluding with their sons and daughters, he has filed the suit as against the revision petitioner. He would further contend that since the sale deed executed by the 1st defendant is a registered one, challenging the same by way of transposing the petitioner as a 7th plaintiff is not at all maintainable. But the learned District Munsif, without appreciating the same has allowed the application, which is erroneous in law.

7. On the other hand, the learned counsel appearing for the respondent would contend that because of the reason that the first defendant transposed as the 7th plaintiff, no prejudice will be caused to the respondents. Hence, the findings arrived at by the learned trial judge is well within the legal principles.

8. Upon considering the arguments advanced by either side, as already observed that it is not in dispute that both plaintiffs and the defendants are related to each other. Further it is also not in dispute that the 1st defendant has executed a sale deed in favour of the 2nd defendant in the year of 2006. Thereby, it is true that he cannot question the validity of the sale deed executed by him, after the lapse of nearly 7 years. In the impugned order passed by the court, the learned trial judge has categorically held that because of allowing the application, no prejudice will be caused to the respondent. In this occasion, it is to be noted that in the written statement filed by the first defendant, he has supported the case of the plaintiffs. In this occasion, the main contention raised by the petitioner before the trial court is that the suit filed by the plaintiff was barred by limitation. Though the said contention of the petitioner in respect to the 1st defendant may be true one, because of the reason that he abandoned his right by way of filing the written statement, it is justifiable to transpose him as a plaintiff. Only by way of filing the written statement, he withdraw the right over the suit property. In this occasion, the plaintiffs seeks partition as they are having the right in the suit

property. In otherwise, in respect to other plaintiffs, question of limitation applied or not has to be decided only after trial. More than that, as of now, the 1st defendant / 1st respondent is no more and accordingly, I am of the considered opinion that the impugned order passed by the Court below is not having any material irregularity.

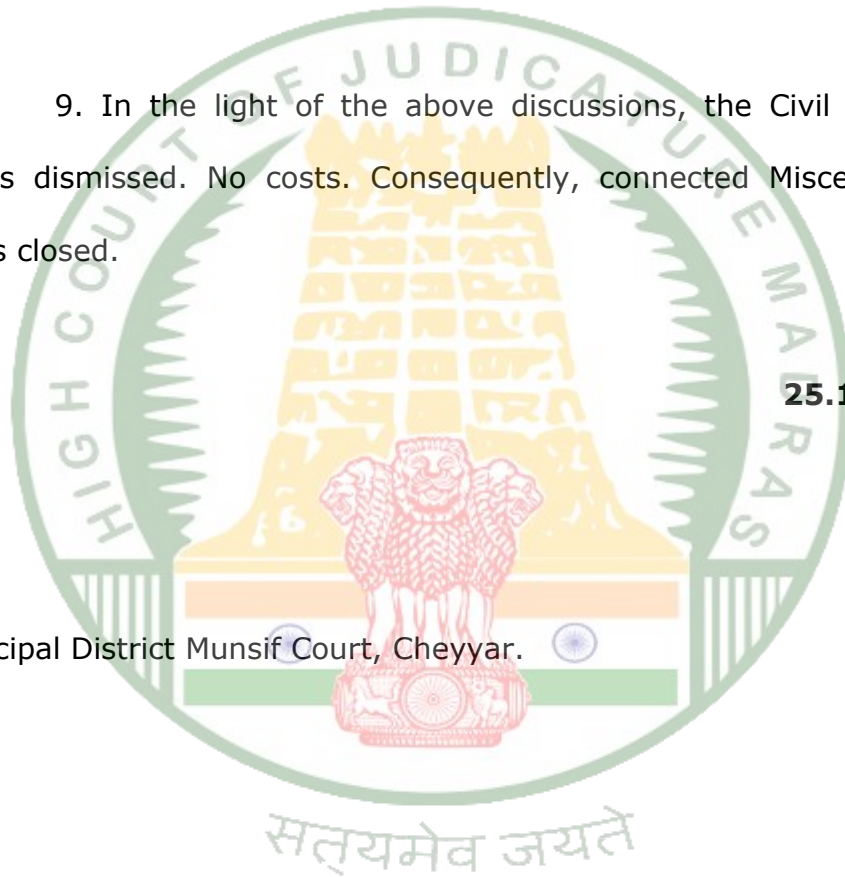
9. In the light of the above discussions, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

25.11.2019

vrn

To

The Principal District Munsif Court, Cheyyar.



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R.PONGIAPPAN, J.,

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**Pre-Delivery order in
Civil Revision (PD) No.3497 of 2014
and
M.P.No.1 of 2014**

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25.11.2019