

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.3168 of 2019
and C.M.P.No.20661 of 2019

Kista Pillai (Died)

- 1.M.Chandran
- 2.Adilakshmi
- 3.R.Hemalatha
- 4.Devaki
- 5.K.Murugesan
- 6.K.Venkatesan
- 7.D.Parvathi
- 8.Alamelu

..Petitioners/Defendants 2 to 9

-Vs-

- 1.Malliga
- 2.Thangavelu Reddy

..Respondents/Plaintiff and
Proposed Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 18.07.2019 made in I.A.No.1046 of 2012 in O.S.No.47 of 2009 on the file of District Munsif Court, Tiruvallur.

For Petitioners : Mr.M.S.Subramanian

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 18.07.2019 made in I.A.No.1046 of 2012 in O.S.No.47 of 2009 on the file of District Munsif Court, Tiruvallur.

2. Heard Mr.M.S.Subramanian, learned counsel for the petitioner, who would submit that, the proposed party to be impleaded as one of the defendant, as has been sought for in the application, which has been allowed by the Court below through the impugned order, is a third party purchaser in respect of a part of the joint family property long years back ie., ,more than 30 years back and this factor has been in fact, brought to the notice of the Court below at the time of filing written statement itself by the defendants. However, after several

years this petition has been filed only to prolong or drag on the proceedings. Therefore, this application, seeking for impleadment of the proposed party as one of the defendants is nothing but unwarranted and therefore, the same ought not to have been allowed by the Court below by the impugned order.

3. As has been pointed out by the learned counsel for the petitioner, a sale seems to have been taken place in respect of part of the joint family property by a sale deed dated 20.07.1983 to and in favour of one Thangavelu Reddy and the said purchaser now is sought to be impleaded as one of the defendants, as per the application filed by the plaintiff, which has been allowed by the trial Court through the impugned order.

In this context, paragraph No.6 of the written statement filed by the revision petitioner / defendant is extracted hereunder:

"(6) This Defendant states that the 3rd item of the suit has been sold by the Defendants in favour of Thangavelu Reddy, S/o Chinnasamy Reddy under a Sale Deed dated 20.07.1983 and the sale consideration has been utilized for the celebration of the marriage of the plaintiff. The plaintiff who is well aware of the said sale has not chosen to question the same all these years. The plaintiff has no right to question the alienation which took place more than 25 years ago. In any event, the purchaser is a necessary party. The suit is bad for non-joinder of necessary party."

4. Therefore, it has become clear that, even though the sale had taken place 25 years back, it was the stand of the defendants before the trial Court that, in any event the purchaser is a necessary party and therefore the suit is bad because of the non-joinder of necessary party. Only in that context, the respondent / plaintiff has filed this application before the trial Court on 05.11.2012 and the same has now been allowed through the impugned order.

5. When the very revision petitioners / defendants have taken a stand that, non-joinder of third party purchaser will hit the prospect of the suit because of non-joinder of necessary party, now the very same defendants / revision petitioners cannot take a stand that, the sale had taken place decades back and therefore, at this juncture the third party purchaser need not be impleaded as party defendant.

6. Though the learned counsel for the petitioner also raised an objection that the said third party has also been examined as P.W.2 on behalf of the plaintiff and therefore there is no necessity to implead him as one of the party defendant in the suit, it is for the plaintiff to implead the necessary party to have a complete adjudication of the issues raised in the suit, as the suit was filed for partition and separate possession of the suit property.

7. When that being so, the reasoning now given by the revision petitioners to oppose the impugned order passed by the trial Court, allowing the petition to implead the third party purchaser as one of the party defendant, cannot be accepted. In that view of the matter, this Court is not inclined to interfere with the order of the trial Court, which is impugned herein.

8. In the result, this revision fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

9. However, in view of the fact that the suit is of the year 2009, and the same is pending for all these years, the trial Court is hereby given a direction to give priority, complete the trial and dispose of the suit at the earliest, preferably within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The District Munsif,
Tiruvallur.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.M.S.Subramanian,Advocate Sr.No. 82083

AKM/08.01.2020/3P-4C /

C.R.P. (PD) No.3168 of 2019