

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) .Nos.3672, 3673, 3723,
3684 & 3685 of 2018
and CMP.Nos.20462, 20510, 20515, 20516,
20519 and 20778 of 2018

K.A.Sankaran

... Petitioner
in all CRPs

Vs.

Kamatchi Basappan

... Respondent
in all CRPs

Prayer in CRP.No.3672 of 2018 Civil Revision Petition filed under article 227 of the Constitution of India to set aside the fair and final order dated 24.10.2018 made in REA No.6 of 2018 in REP No.287 of 1997 in OS No.261 of 1977 on the file of the Principal Subordinate Judge, Krishnagiri.

Prayer in CRP.No.3673 of 2018 Civil Revision Petition filed under article 227 of the Constitution of India to set aside the fair and final order dated 24.10.2018 made in REA No.7 of 2018 in REP No.311 of 1997 in OS No.261 of 1977 on the file of the Principal Subordinate Judge, Krishnagiri.

Prayer in CRP.No.3723 of 2018 Civil Revision Petition filed under article 227 of the Constitution of India to set aside the fair and final order dated 24.10.2018 made in REA No.8 of 2018 in REP No.312 of 1997 in OS No.261 of 1977 on the file of the Principal Subordinate Judge, Krishnagiri.

Prayer in CRP.No.3684 of 2018 Civil Revision Petition filed under article 227 of the Constitution of India to set aside the fair and final order dated 24.10.2018 made in REA No.10 of 2018 in REP No.322 of 1997 in OS No.261 of 1977 on the file of the Principal Subordinate Judge, Krishnagiri.

Prayer in CRP.No.3685 of 2018 Civil Revision Petition filed under article 227 of the Constitution of India to set aside the fair and final order dated 24.10.2018 made in REA No.9 of 2018 in REP No.313 of 1997 in OS No.261 of 1977 on the file of the Principal Subordinate Judge, Krishnagiri.

For Petitioner : Mr.A.E.Ravichandran in all CRPs

For Respondent : Mr.C.Prabakaran in all CRPs

COMMON ORDER

Challenging the fair and final order dated 24.10.2018 made in REA Nos.6,7,8,10 & 9 of 2018 in REP Nos.287, 311, 312, 322 & 313 of 1997 in OS No.261 of 1977 on the file of the Principal Subordinate Judge, Krishnagiri., the present civil revision petitions have been filed.

2. The above civil revision petitions emanate from a very interesting dispute where two decree holders are now crossing swords and as a result of which the judgment debtors are allowed to continue in the property.

3. The revision petitioner herein who is the 23rd plaintiff and the respondent herein who is the 29th plaintiff along with 34 others had filed the suit in O.S.No.261 of 1977 on the file of the Principal Subordinate Court, Krishnagiri for recovery of possession of the suit schedule property.

4. The said suit was decreed by judgment and decree dated 22.04.1977 and thereafter the 23rd plaintiff had filed Execution proceedings in REP Nos.287 of 1997, 311 of 1997, 312 of 1997, 313 of 1997 and 322 of 1997, while the Execution proceedings were pending the 29th plaintiff namely the respondent herein had filed an interlocutory application in REA Nos. 6 of 2018 in REP No.287 of 1997, REA.No.7 of 2018 in REP No.311 of 1997, REA.No.8 of 2018 in REP.No.312 of 1997, REA.No.9 of 2018 in REP.No.313 of 1997 and REA.No.10 of 2018 in REP.No.322 of 1997 respectively under Section 47 of the Civil Procedure Code. The said petition has been filed on the ground that the respondent has a deficit trust in the 23rd plaintiff decree holder. She fears that the

only attempt on the side of the 23rd plaintiff is to grab the property and cheat the other decree holders. Further the learned counsel for the petitioner submitted that the respondent/29th plaintiff had obtained a decree for partition in O.S.No.75 of 2004 on 16.02.2006 after full trial. The revision petitioner herein had been arrayed as the first defendant in the said suit, as against the judgment and decree the revision petitioner has not preferred any appeal and therefore that the decree in O.S.No.75 of 2004 has become final. Pursuant to this decree, the revision petitioner is attempting to take the possession of the property. The learned Judge by order dated 24.10.2018 has observed that the respondent's rights have been protected and non impleadment of other decree holders will not in any way affect the Execution proceedings, since the 23rd plaintiff is taking care to protect the interest of all the decree holders, he however directed that the respondent herein to be impleaded as respondent in Execution proceedings. Challenging the said order the revision petitioner is before this Court.

5. Heard Mr.A.E.Ravichandran, learned counsel appearing for the petitioner and Mr.C.Prabakaran, learned counsel appearing for the respondent.

6. The learned counsel for the petitioner would argue that the application filed under Section 47 of the Civil Procedure Code is not maintainable, since the 29th plaintiff/respondent herein is a plaintiff along with the revision petitioner/23rd plaintiff and the application cannot be filed inter se between the same category of parties (in the instant case plaintiff). He would further argue that she cannot be permitted to oppose the execution of the decree that she has also jointly obtained and an incongruous situation would arise.

7. Per contra, the learned counsel appearing for the respondent submitted that the reasons for seeking to be represented is only on the ground that the respondent suspected bonafides of the revision petitioner. He however said that he had no objection if the 29th plaintiff is impleaded as the second decree holder/second petitioner in the Execution proceedings.

8. Mr.A.E.Ravichandran learned counsel for the petitioner submitted that the revision petitioner has no objection as his only grievance is that 29th plaintiff should not work against the

interest of the 23rd plaintiff. Therefore considering the above submission the order of the learned Principle Subordinate Judge, Krishnagiri is modified to the extent that the respondent herein who is the petitioner in the applications subject matter of this revision will be impleaded as the second petitioner/29th decree holder in the respective Execution proceedings.

9. With the above observation, the civil revision petition is disposed of. Once impleaded the necessary amendment shall be carried out and the Court below shall proceed to dispose of the Execution petitions in REP Nos.287 of 1997, 311 of 1997, 312 of 1997, 313 of 1997 and 322 of 1997 within a period of two months thereafter. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The learned Principal Subordinate Judge,
Krishnagiri.

+1 cc to Mr.A.E.Ravichandran, Advocate, S.R.No.38417

+1 cc to Mr.C.Prabakaran, Advocate, S.R.No.38499

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pms (CO)
SSM(29/04/2019) .

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