



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2019

CORAM:

THE HONOURABLE **MRS.JUSTICE S.RAMATHILAGAM**

C.R.P (PD) (MD) No.546 of 2019

and

C.M.P. (MD) No.2714 of 2019

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1. R.Ramar
2. R.Vijayarajan

... Petitioners/Respondents
1 to 2 / Plaintiffs

Vs.

1. Marirathinam @ Arumugasamy Naikkar

... 1st Respondent/Petitioner
3rd party

2. S.R.Saraswathi
Srinivasa Hospital,
D.No.95, Old TVS Road,
Theni District.

3. The Commissioner,
Theni-Allinagaram Municipality,
Periyakulam Road, Theni Town,
Theni District.

4. The Thasildar,
Theni Taluk, Theni District.

5. The District Collector,
Theni District, Theni. ... Respondents 2 to 5/Respondents
3 to 6/Defendants 1 to 4

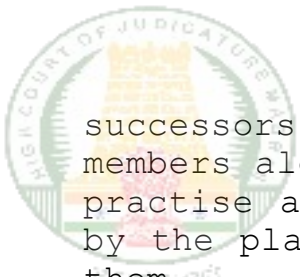
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order 31.08.2018 passed in I.A.No.382 of 2017 in O.S.No.51 of 2017 by the District Munsif, Theni.

For Petitioners : Mr.M.Prabhu

ORDER

The Civil Revision Petitioner has been preferred against the fair and decreetal order passed in I.A.No.382 of 2017 in O.S.No.51 of 2017 on the file of the learned District Munsif, Theni.

2. The petitioners herein, as the plaintiffs, have filed a suit in O.S.No.51 of 2017 claiming that the petitioners alone are the existing legal heirs of Kandamanoor Zamin. Some of other fictitious persons may claim in future that they are the

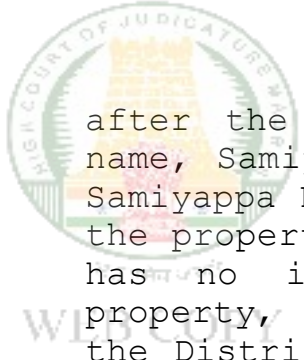


successors of Zamin T.R.S.Kathirvelsamypandian and the male members alone have rights to adorned Zamin and it is the customary practise also in the Zamin. Hence, this petition has been filed by the plaintiffs for issuing succession certificate in favour of them.

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3.The suit has been filed by the plaintiffs for the relief of permanent injunction restraining the first defendant and his men from interfering with the peaceful possession and enjoyment of the suit property and for permanent injunction against the second defendant not to issue any approval plan or tax receipt to the first defendant and for permanent injunction against the third defendant not to transfer the patta based on the representation of the first defendant. In the said suit, the first defendant has filed written statement, in which, she has stated that already there was a suit pending before the Sub-Court, Tirunelveli in O.S.No.65 of 1897 and the Judgment passed in the said suit was also confirmed by the Madras High Court in A.S.No.166 of 1901 and the execution petition was also proceeded and the property was also taken by the Government, as per the Zamin Abolition Act. Whereas, these facts are wantonly suppressed by the plaintiffs and they have stated false information in the paragraphs 5 and 6 of the plaint. The plaint scheduled property having 2 acres and 72 cents, which lies in patta No.1822, was already sub-divided and it was also allotted to the share of one Srirangaraja, who is the son of Annamaraja. Hence, the extent of the said property is also not stated by the plaintiffs in the suit. Further, it is stated in the written statement that the suit properties and other properties have been taken by Patel family by the auction and thereafter, the said Srirangaraja purchased the suit properties from them by sale deed dated 15.08.1927 and based on the partition among their family, certain extents were allotted to Annamaraja branch. Based on that, the suit properties to an extent of 2 acres 72 cents in S.No.275 were sub-divided and in S.No.275/2, to an extent of 1 acre and 31 cents was allotted to Annamaraja and Patta No.1822 was also issued in his name. Thereafter, the first defendant and her husband Dr.Krishnamasamy purchased 33-3/4 cents by way of sale deed dated 12.06.1987. After selling the portion of property, remaining property is in possession and enjoyment of the said Annamaraja. A portion of the property in the said S.No.275/2 was purchased by Dr.Krishangobal, who is the son of the first defendant and the said property was also included by sub-division as 22/1B and a patta in Patta No.2813 was also issued. Whereas these facts were suppressed by the plaintiffs. Hence, the defendants sought for dismissal of the suit.

4. In the said suit, an interlocutory application in I.A.No.382 of 2017 was filed by one Marirathinam @ Arumugasamy Naicker, who claimed as third party. In the said petition, he stated that the plaintiffs stated that the suit property was purchased by one Velandiayammal from one Samiyappa Naicker and

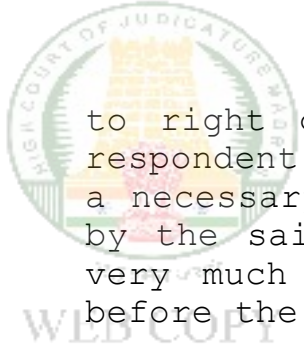


after the death of Velandiyammal, the only one legal heir, by name, Samiyappa Naicker enjoyed the same. After the death of the Samiyappa Naicker, his only son T.R.S.Kathirvelpandian was enjoyed the property. After the death of T.R.S.Kathirvelpandian, since he has no issue, his relative one Rajavelpandian enjoyed the property, based on the decree in O.S.No.422/1995 on the file of the District Munsif, Periyakulam and the order of the petition in S.O.P.No.2 of 2013 on the file of the Sub- Court, Theni claiming that he is the legal heir of T.R.S.Kathirvelpandian @ Minor Pandian. After the demise of the said Rajavelpandian, his elder son Sundaravelpandian enjoyed the same and thereafter, the plaintiffs enjoyed the same. He further stated that the above statement stated by the plaintiffs is false and the plaintiffs filed the suit, stating the false statement. The plaintiffs suppressed the fact that one Thayammal is the daughter of T.R.S.Samiyappa Naicker. The said Thayammal married one Kathirvelsamy Naicker and they have one son, by name, S.K.Kamarajendra Kathirvel @ S.K.K.Pandian and two daughters. Marirathinam @ Arumugasamy Naicker is the petitioner in I.A.No.382 of 2017 in O.S.No.51 of 2017 on the file of the learned District Munsif, Theni. He is the son of S.K.Kamarajendra Kathirvel @ S.K.K.Pandian.

5. Hence, the petitioner in I.A.No.382 of 2017 contended that there were two suits filed with regard to the property of the Kandamanoor Zamin in O.S.No.49/2011 and O.S.No.23/2013 and the same are pending. One Sundara Vadivel, who is the one of the party of the plaintiffs, is added as 20th respondent in O.S.No.49/2011 and the plaintiffs were also filed a petition in I.A.No.95/2013 in O.S.No.23/2013 for impleading them as a necessary party. Already the plaintiffs had filed petition in S.O.P.No.2/2013 before the Sub-Court, Theni and got right over the said property by way of false statement. Based on the above right got from the Sub-Court, Theni, the plaintiffs got a fraudulent patta in their names. The third party/petitioner claiming himself to implead as defendant in original suit in O.S.No.51/2017.

6. The trial Court observed the said contentions and also observed the fact that especially the plea made by the petitioner in I.A.No.382 of 2017 in O.S.No.51 of 2017 that he claiming himself as grand son of one T.R.S.Samyappa Nadar and there are also properties bequeath his mother Velandiyammal, the trial Court finding that he is a necessary party and allowed the said petition.

7. But the civil revision petitioners herein contended that as far as the suit in O.S.No.51 of 2017 is concerned, when the suit is filed by the petitioners herein only for permanent injunction restraining the defendants, they are no way connected pertaining to the records. The learned counsel for the petitioners herein contended that already number of suits are pending relating



to right over the Kandamanoor Zamin properties. The impleaded respondent also is claimed right over the said property and he is a necessary party and no way the petitioners herein is prejudiced by the said impleading. Hence, the order of the trial Court is very much reasonable and the petitioners have right to agitate before the trial Court during the time of trial.

8. In the light of the above facts, I find no reason to interfere with the order of the trial Court. Therefore, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Munsif,
Theni.
2. The Record Keeper, -2 copies
Vernacular Section,
Madurai Bench of Madras High Court.

das

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