



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2019

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THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (PD) (MD) Nos.579 and 580 of 2019
and
C.M.P. (MD) Nos.2876 and 2877 of 2019

S.M.Krishnan :Petitioner in both C.R.Ps.

Vs.

1.Chinnapillai Ammal
2.Kalyani Ammal :Respondents in both C.R.Ps.
3.S.Chandramohan
4.S.Babu : Respondents in C.R.P. (MD)
No.580 of 2019

Prayer in C.R.P. (MD) No.579 of 2019:- Civil Revision Petition is filed, under Section 227 of the Civil Procedure Code, to set aside the fair and decreetal order dated 11.12.2018 made in I.A.No.926 of 2018 in O.S.No.616 of 2005 on the file of the III Additional District Munsif, Trichy.

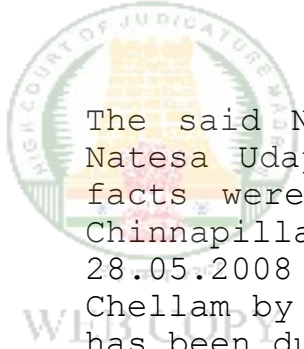
Prayer in C.R.P. (MD) No.580 of 2019:- Civil Revision Petition is filed, under Section 227 of the Civil Procedure Code, to set aside the fair and decreetal order dated 11.12.2018 made in I.A.No.927 of 2018 in O.S.No.616 of 2005 on the file of the III Additional District Munsif, Trichy.

For Petitioners : Mr.K.Prabhakar
(in both C.R.Ps)

COMMON ORDER

These civil revision petitions have been preferred by the petitioner against the fair and decreetal order passed in I.A.Nos.926 of 2018 and 927 of 2018 in O.S.No.616 of 2005 on the file of the III Additional District Munsif, Trichy.

2.I.A.No.926 of 2018 was filed by the plaintiffs/respondents. In the said petition, the petitioners contended that the first item of the suit property was purchased by one Natesa Udayar and his wife Chinnapillai Ammal under a registered sale deed on 10.12.1987. The third item was purchased by one Natesa Udayar through registered sale deed on 22.07.1985. The fourth item was purchased by Chinnapillai Ammal by means of a registered sale deed dated 22.07.1985. The said Natesa Udayar and his wife Chinnapillai Ammal executed a Will in a sound disposing state of mind on 05.03.1994.



The said Natesa Udayar died. After his death, the grandson of Natesa Udayar got the properties as per the said Will. The said facts were stated in the plaint itself. The first plaintiff/Chinnapillai Ammal executed a registered settlement deed on 28.05.2008 in favour of her grandson born through her daughter Chellam by name Dr.S.Chandramohan and S.Babu and the settlement deed has been duly executed and registered in accordance with law.

3.It is seen from the affidavit filed by the third parties that as per the sale deed, the property came into the possession of Dr.S.Chandramohan and S.Babu. They are the necessary party in the said suit. Further, Natesa Udayar's share came into his grandson and any one of them can file a suit on behalf of other co-owner and the said suit was filed in that aspect. Now, the entire interest of plaintiff in the subject matter of the suit lies on the persons Dr.S.Chandramohan and S.Babu and they are the necessary parties and they have to be impleaded as supplemental plaintiffs 3 and 4 in the said suit.

4.Another application was filed by the same petitioners/plaintiffs in I.A.No.927 of 2018. In the said petition, the petitioners claim themselves to be added as proposed plaintiffs 3 and 4 by elucidating the same fact that how the related items in the suit property were purchased by Natesa Udayar and Chinnapillai Ammal and how the petitioners as well as the grandson of Natesa Udayar claim right over the said property by way of Will.

5.The defendant who is the respondent contended that the suit is filed for injunction and for the said relief, these persons claim themselves to be added as necessary parties 3 and 4. The plaintiffs are not at all necessary party and further, the reasons stated by the petitioner herein as defendant that the petitioner is 86 years old and the case is also pending from 2005 without any reasonable cause.

6.The respondent contended that even as early as in the year 2005, he has made an averment in the written statement that the necessary parties are not added in the plaint and in spite of the earlier averment made in the written statement itself, the plaintiffs have not taken any steps and only at the time of trial, these petitions has been preferred by them.

7.Considering the nature of the relief sought by the petitioner/plaintiff, the trial Court has observed the contentions raised by both side and given a finding that the right over the property lies on the proposed party i.e., one Dr.S.Chandramohan and S.Babu and without adding them as a necessary party, the said relief cannot be given because the proposed party claimed themselves that they are being the grand son of Natesa Udayar and they are claiming right over the property by way of settlement deed. Hence, the trial Court allowed the proposed parties 3 and 4 as necessary party in the said suit.



8.The grievance of the petitioner is that the relief can very well be decided without impleading the proposed party as necessary plaintiff in the said suit. Further, the petitioner herein is very much disputing the settlement deed as well as Will. He further submitted that the necessity of impleading persons who have subsequently acquired an interest in the property during the pendency of the suit does not arise. The applications have been filed under Order 3 Rule 2 of C.P.C to permit one S.Chellam to act as power agent of one Chandramohan. Hence, neither the said Chandramohan nor the power agent to be added as parties in the said application. Further, the power of attorney document dated 28.12.2017 has not been referred anywhere in the affidavit.

9.In view of the above submission, the order passed by the trial Court does not warrant any interference. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS-)

To

The III Additional District Munsif, Trichy.

+2. C.C. to Mr.K.Prabhakar Advocate SR.Nos.60004,60005

C.R.P.(PD) (MD) Nos.579 and 580 of 2019

and

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