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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.03.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

C.R.P.(PD)(MD)No.1940 of 2015

D.Thiyagarajan .. Petitioner/3rd Respondent/2nd Defendant
Vs.

1.J.Ramadevi ...1st Respondent/Petitioner/3rd Party

2. R.Nilakandan ...2nd Respondent/1st Respondent/Plaintiff

3.V.Jayakumar .. 3rd Respondent/2nd Respondent/1st Defendant

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order in I.A.No.25 of 2015 in O.S.No.39 of 2011 dated 01.04.2015 on the file of the learned II Additional District Court and Sessions Judge, Thanjavur.

For Petitioner : Mr.R.Rajaraman

For 2nd Respondent : Mr.P.Vadivel

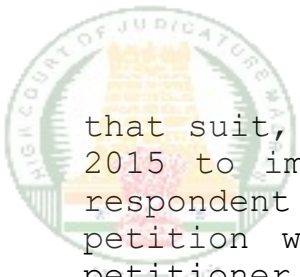
For Respondents 1 and 3 : No Appearance

ORDER

Heard the learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.25 of 2015 in O.S.No.39 of 2011 dated 01.04.2015 on the file of the learned II Additional District Court and Sessions Judge, Thanjavur.

3.The petitioner herein is the second defendant, the first respondent herein is a third party who is the wife of the third respondent, the second respondent herein is the plaintiff and the third respondent herein is the first defendant in the suit. The second respondent herein has filed a suit in O.S.No.39 of 2011 for declaring his title and for declaring the sale agreement dated 16.12.1998 and the sale deed dated 19.03.2009 as null and void. In



that suit, the first respondent has filed a petition in I.A.No.25 of 2015 to implead herself as a party stating that her husband/third respondent herein is of unsound mind from the year 1996 onwards. The petition was allowed by the trial Court. Against the order, the petitioner has come forward with this revision petition.

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4.On the side of the petitioner, it is stated that the petitioner entered into the sale agreement with the third respondent on 16.12.1998. He has executed a sale deed on 19.03.2009. The second respondent filed a suit against the petitioner to declare the aforesaid sale agreement and sale deed as null and void. During the pendency of the suit, the first respondent filed a petition to implead herself as a party to the suit.

5.On the side of the petitioner, it is stated that when the petitioner has filed a suit in O.S.No.68 of 2011 and the second respondent filed another suit in O.S.No.39 of 2011 for declaration and for injunction against the third respondent and the petitioner. It is stated that the third respondent was a Government servant who retired from service in the year 2003. The husband of the first respondent filed vakalat in this case. The third respondent who is the husband of the first respondent obtained housing loan and he has paid all the dues and he got the certificate and he was served notice and he sent reply notice and that he attended the Sub Registrar office and made an entry before the Registrar and that he executed a registered agreement and then he executed two sale deeds on 19.03.2009 and on 29.12.2010 respectively. This petition was filed by the petitioner only in the year 2015. It is stated that until the filing of the suit, the petitioner has not taken any steps to declare her husband as a person of unsound mind under the Mental Health Act and only in the year 2014, she is stated to have filed a petition in I.A.No.31 of 2014 before the learned Principal District Judge, Thanjavur stating that her husband was mentally ill from 1996. The petition was allowed by the trial Court only on the basis of apprehension and only to defraud the vendors, the respondents 1 and 3 are colluding with each other and have filed this petition.

6.On the side of the first respondent, it is stated that the third respondent has become a person of unsound mind in the beginning of the year 1996. He is incapable of managing his affairs and to protect the interest in the property. The petitioner and the second respondent created some fraudulent documents and they have filed suits in O.S.No.68 of 2011 and O.S.No.39 of 2011 and protect the interest of the second respondent in the property and hence, impleading the first respondent is necessary. It is stated that the first respondent has filed the petition to declare herself as a guardian of the third respondent and the proceedings is pending before the learned Principal District Court, Thanjavur in I.A.No.39 of 2014. if the Judgment is passed in these cases before the first respondent obtained the order declaring herself as guardian of the third respondent, the rights of the first respondent will be prejudice and prayed the petition to be dismissed.



7. On the side of the second respondent, it is stated that the third respondent is hale and healthy and he has executed a sale agreement in favour of the second respondent and the power agent of second respondent has executed the sale deed in his favour and the third respondent was represented through his counsel in the trial Court. It is stated that the first respondent can get any right to be impleaded in the suit, only after obtaining the order in the petition filed by her to declare herself as a guardian of the third respondent. It is stated that the first respondent is not a necessary party to the suit.

8. It is seen that the suit was filed in the individual capacity and was not filed through the next friend. The vakalat for this case was filed by the third respondent. The third respondent was allotted a house in lease cum sale agreement scheme and he repaid the entire amount and he obtained sale certificate from the housing Board. As the suit was filed against the third respondent in his individual capacity, he cannot be presumed to be a person of unsound mind at the present stage of the suit. It is seen that the third respondent retired from service in the year 2003. The first respondent filed a petition in I.A.No.39 of 2014 under the Mental Health Act to declare the third respondent as a person of unsound mind only in the year 2014.

9. If the first respondent is really interested in that case, she would have taken steps to obtain an order under the Mental Health Act much earlier. But the I.A petition was filed only in the year 2014. Since 5 years lapsed, there is no reason for the proceedings to be kept pending. As the third respondent was not declared as a person of unsound mind, there is no necessity to implead the first respondent. If at all the first respondent is able to obtain an order in I.A.No.39 of 2014 pending before the learned Principal District Judge, Thanjavur, then she is at liberty to file a petition to implead herself as a party to the suit.

10. Accordingly, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.25 of 2015 in O.S.No.39 of 2011 dated 01.04.2015 on the file of the learned II Additional District Court and Sessions Judge, Thanjavur. No Costs.

Sd/-

Assistant Registrar (AD-II)

/ True Copy /



To

The II Additional District Court and Sessions Judge,
Thanjavur.

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30.04.2019

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