



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2019

DELIVERED ON : 05.04.2019

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

**C.R.P. (PD) (MD) No.2359 of 2015**

1.Blessymol

2.Priyamol

... Petitioners/Petitioners/Plaintiffs

Vs.

1.Leely Pushpam

2.Alexander

... Respondents/Respondents/Defendants

3.The Branch Manager,  
State Bank of India,  
Vadasery Branch,  
Nagercoil,  
Kanyakumari District.

4.The Regional Manager,  
State Bank of India,  
Tirunelveli,  
Tirunelveli District.

... Respondents/Respondents/Proposed  
Parties

**Prayer :** This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.375 of 2014 in I.O.P.No.47 of 2012 on the file of the learned Sub Judge, Kuzhithurai dated 13.03.2015.

For Petitioners : Mr.V.M.Balamohan Thambi

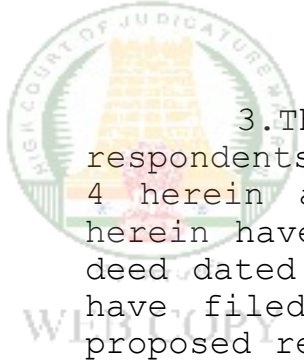
For Respondents 1 and 2 : Mr.K.P.Narayanakumar

For Respondents 3 and 4 : Mr.Ananth. C.Rajesh

**ORDER**

Heard Mr.V.M.Balamohan Thambi, learned counsel appearing for the petitioner, Mr.K.P.Narayanakumar, learned counsel appearing for the respondents 1 and 2 and Mr.Ananth. C.Rajesh, learned counsel appearing for the respondents 3 and 4.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.375 of 2014 in I.O.P.No.47 of 2012 dated 13.03.2015 on the file of the learned Sub Judge, Kuzhithurai.



3. The petitioners herein are the plaintiffs and the respondents 1 and 2 herein are the defendants, the respondents 3 and 4 herein are the proposed parties in the suit. The petitioners herein have filed a suit in I.O.P.No.47 of 2012 to cancel the sale deed dated 24.03.2005 and for permanent injunction. The petitioners have filed a petition in I.A.No.375 of 2014 for impleading the proposed respondents 3 and 4 as the defendants 3 and 4 in the suit. The trial Court has dismissed the petition. Against the order of dismissal, the petitioners have come forward with this revision petition.

4. On the side of the petitioners, it is stated that the suit is for permanent injunction and that when the suit is pending, the respondents 1 and 2 mortgaged the property in favour of the proposed respondents and the respondents 1 and 2 failed to pay the E.M.I., and the proposed respondents proceed against the suit property under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and hence, impleading the proposed parties as the defendants 3 and 4 is necessary.

5. On the side of the petitioners, it is further stated that the Bank has taken possession under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the writ petition was dismissed observing to approach the Civil Court. If the Bank sold the property, the case of the petitioners will become infructuous and prayed the revision petition to be allowed.

6. On the side of the respondents 1 and 2, it is stated that the petitioners have not filed an impleading petition in the original suit. The petitioners came forward with this revision petition in I.O.P.No.47 of 2012 which is only an indigent petition. The property in dispute is 13 cents out of 46 cents and this property is sold to the defendants. The first defendant agreed to purchase the property only to help the petitioners and their mother who were badly in need of money at that time. When the petitioners owned 33 cents of land in survey no.324/10 in Palukal Village which is worth more than Rs.23,00,000/- (Rupees Twenty Three Lakhs only), the petitioners have filed this indigent petition stating that they are only in possession of 8 sarees and 8 blouses and the petitioners have admitted the execution of the sale deed but have alleged that in the pretends of executing a hypothecation deed, the sale deed was created. The petitioners have claimed that they did not know tamil but she studied in Kanyakumari District and she belonged to Kanyakumari District and she is having knowledge of tamil. Suppressing all these facts, an indigent petition was filed and that this defendant mortgaged the property with the Bank and the Bank is having every right to take action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Bank is not at all the necessary party to decide the dispute in question and prayed the petition to be dismissed.



7. On the side of the proposed respondents, it is stated that the defendants 1 and 2 obtained a loan by mortgaging their property and they created a mortgage by depositing title deeds with the Bank and the Bank has initiated SAR proceedings and the District Collector has passed an order for possession and only after the possession notice is served, the petitioners have come forward to implead these respondents and that the Jurisdiction of the Civil Court is barred under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and that the petitioners have to approach Debt Recovery Tribunal and the Bank is not a necessary party.

8. On the side of the petitioners, it is stated that already a suit in O.S.No.21 of 2018 is numbered. The merits of the case can be decided before the trial Court and the petitioners are not questioning the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and this Court has made an observation in the writ petition filed by the petitioner in W.P.(MD)No.18201 of 2018 dated 21.08.2018 that the petitioners have to approach the Civil Court and already this Court granted leave to amend the written statement including the prayer of non joinder of necessary parties and only on the basis of this observation, the petitioners want to make necessary amendments.

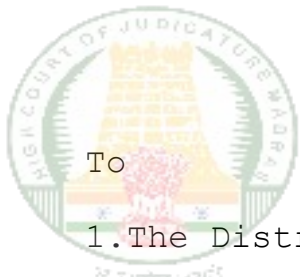
9. It is seen that the petitioners have filed only an indigent petition and in an indigent petition, the only point to be decided is whether the petitioners are capable of paying the Court fee or not and only the Revenue Officials are the necessary parties in an indigent petition. For deciding the issue whether the petitioners are capable paying the Court fee, the proposed respondents are not necessary parties and only after deciding the indigent petition, the suit can be numbered. It is stated that the suit was already numbered. If the suit is already numbered, the indigent petition itself become infructuous and the I.A. petition in indigent petition will also become infructuous. In the above circumstances, there is no merits in the petition and hence, this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.323 of 2015 in O.S.No.86 of 2011 dated 26.06.2015 on the file of the District Munsif Court, Aranthangi. No Costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS )



To

1.The District Munsif, Aranthangi.

2.The Subordinate Judge,  
Kuzhithurai.

+1 CC to M/s.ANANTH.C.RAJESH, Advocate in SR-59454

+1 CC to M/s.V.M.BALA MOHAN THAMPI, Advocate in SR-59645

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate in SR-59619

C.R.P. (PD) (MD) No.2359 of 2015

05.04.2019

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