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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.03.2019

DELIVERED ON : 16.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2663 of 2015

and

M.P. (MD) No. 2 of 2015

- 1.K.P.Sooli
- 2.S.Prabhu
- 3.M.Malaiyaveeran
- 4.Dr.M.Kumaresan
- 5.Dr.M.Odaian
- 6.O.Dinesh Mani
- 7.A.Karthikeyan
- 8.M.Maharaja
- 9.M.Maniraj

.. Petitioners /Plaintiffs

Vs.

- 1.Kalluvetti Karuppanan Mandagapadi
'Thanneerpandhal Trust',
Rep. By its present trustee
Alamelu Mangai
- 2.Alamelu Mangai
- 3.M.Andi
- 4.A.Mathuraisamy
- 5.K.P.Ayyanan
- 6.K.P.Mathuraichamy
- 7.K.P.Govindasamy
- 8.K.P.Rajendran
- 9.K.P.Mahendran
- 10.A.Raja
- 11.A.Senthilkumar
- 12.I.Ariff

.. Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the decree and Judgment in I.A.No.32 of 2013 in I.A.No.213 of 2012 in O.S.No.116 of 2012 dated 21.11.2014 on the file of the V Additional District Court, Madurai.

For Petitioners

: Mr.S.Nateshraj

<https://hcservices.ecourt.gov.in/> For Respondents 1 to 4

: Mr.K.Sekar

For Respondents 10 and 11

: Mr.E.M.S.Sugumaran



For Respondents 5 to 9 : Mr.C.Karthik
R12 :No Appearance

ORDER

Heard the learned counsel appearing on either side.

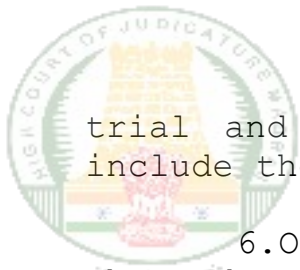
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2.This Civil Revision Petition has been filed against the order passed in I.A.No.32 of 2013 in I.A.No.213 of 2012 in O.S.No.116 of 2012 dated 21.11.2014 on the file of the learned V Additional District Judge, Madurai.

3.The petitioners herein are the plaintiffs and the respondents herein are the defendants in the suit. The petitioners herein have filed a suit in O.S.No.116 of 2012 for a prayer of terminating the trustship of the second defendant and to appoint the third plaintiff as the 'Trustee' and for granting an order of mandatory injunction directing the second defendant to render proper accounts and to declare the settlement deed dated 12.12.2011 as null and void and to declare the sale deed dated 03.02.2012 in favour of the 10th defendant as null and void and to declare the sale deed dated 03.02.2012 in favour of the 11th defendant as null and void and to declare the pathway agreement deed dated 24.04.2006 as null and void. In the suit, the petitioners filed a petition in I.A.No.213 of 2013 to appoint a 'Receiver' to administer the petition mentioned properties and to carry out the performances and functions of the trust, from the income derived from those properties and to deposit the residue into the Court. Until the appointment of the new Trustee. In that I.A. petition, the petitioners have filed another petition in I.A.No.32 of 2012 to amend the petition in I.A.No.213 of 2012. The trial Court dismissed that petition. Against which, the petitioners have come forward with this revision petition.

4.On the side of the petitioners, it is stated that the prayer column is wrongly mentioned due to cut and paste method and that the prayer in some other petition is incorporated in this petition whereas in the affidavit prayer is correctly stated and the petition is to be amended accordingly. It is further stated that there are 79 properties in the original suit. Until the time of arguments, the petitioners never found out that there is mistaken crept in the prayer column of the petition and only at the time of arguments, the petitioner came to know about this typographical error. The respondents 1 to 4 and 5 to 9 did not have any specific objections over the amendment and they agreed for the amendment.

5.On the side of the petitioners, it is stated that 17 properties are stated in the suit but one more property is left
<https://hcservices.ecourt.gov.in/hcservices/> petitioners want to include that property and the respondents may disprove the stand of the petitioners and they may prove that the property is an individual property in the course of



trial and that they cannot deny the right of the plaintiff to include the said property in the list of suit properties.

6. On the side of the respondents 10 and 11, it is stated that the property proposed to be impleaded in the suit is an individual property of the second respondent and there is no necessity to include the property in the list and that an inclusion of the property will change the nature of the suit. It is stated that no document of title is filed to prove that the property belonged to the respondents.

7. The case of the petitioners is that though patta stands in the name of the second petitioner and the property belonged to the Trust and that the trust property is to be included in the receiver petition.

8. It is seen that the petitioners has filed a suit to declare the sale deed and settlement deed dated 12.12.2011 and 03.02.2012 as null and void and to appoint the third plaintiff as Trustee and to terminate the Trustship of the second defendant. The founder of the trust has dedicated the suit property and other properties to the Trust namely "Kalluvetti Karuppanan Mandagapadi Thanneerpandal Trust". It is stated that the suit property belonged to the Trust. The case of the petitioners is that one more property is to be included as the property of the trust. The case of the respondents is that the property sought to be included in is an individual property of the second defendant and that the said land is in the name of second defendant in his individual capacity. Trial has not yet commenced. Whether the second respondent is having any individual right over the property or not can be decided only after the completion of the trial. No prejudice will be caused to the respondents in including the property as the 18th item of the suit property. The trial Court has failed to give any reasons for dismissing the petition.

9. In the above circumstances, this Civil revision Petition is allowed and the order passed in in I.A.No.32 of 2013 in I.A.No.213 of 2012 in O.S.No.116 of 2012 dated 21.11.2014 on the file of the V Additional District Court, Madurai is set aside. No Costs. Consequently, M.P.(MD)No.2 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

The V Additional District Judge, Madurai.

+1 CC to M/s.S.NATESHRAJA, Advocate(SR-61499[F] dated 22/04/2019)

+1 CC to M/s.C.KARTHIK, Advocate (SR-61447[F] dated 22/04/2019)

mrn

C.R.P. (PD) (MD) No.2663 of 2015
16.04.2019

KM/ (27.04.2019) 4P 4C