



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Thursday, the First day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CMP(MD) No.2798 of 2019

in

SA No.1480 of 2004

M.SAMADURAI ... PETITIONER/PROPOSED 6th RESPONDENT

Vs

1 S.TENSINGH ... 1st RESPONDENT/APPELLANT

2 KUTTI AMMAL(DIED)

3 MURUGANANTHAM

4 SUBBIAH KONAR

5 ARUMUGAM

6 BALAJI ... RESPONDENTS 2 TO 6/RESPONDENTS 1 TO 5

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the Petitioner as the 6th Respondent in the above Second Appeal and thus render justice.

PRAYER in SA(MD)No.480 of 2004:

To prefer the following Memorandum of Grounds of Second Appeal against the Judgment and Decree dated 21.07.2003 passed by the Subordinate Judge, Tuticorin in A.S.No.19 of 2002 confirming the Judgment and Decree of dismissal of suit in O.S.No.1060 of 1995 dated 28.06.2000 passed by the Additional District Munsif, Tiruchendur.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.I.ROBERT CHANDRAKUMAR, Advocate for the petitioner and of MR.K.RAJKUMAR for R1 and MR.H.ARUMUGAM for R3 TO R6, the court made the following order:-

Date of Reserving the Judgment	Date of Pronouncing the Judgment
02.07.2019	01/08/19



This petition has been filed to implead the petitioner as 6th respondent in the Second Appeal.

2.The averments made in the petition are that the petitioner is the proposed sixth respondent in the second appeal. The property in Ayan punja Resurvey No.222/A1, Keelathiruchendur Village, Tiruchendur, Thoothukudi District, measuring an extent of 1.61 cents belongs to religious institution viz., Tharumapuram Aathinam Mutt. The first respondent's family was the lease holder of the above said property from the year of 1937. On 10.06.2016, the first respondent surrendered the above said property to the Aathinam upon clearing all the rent arrears. Thereafter, the petitioner entered into an rental agreement with the above said Aathinam in respect of the above said property. Now only the petitioner came to know that the third respondent has created a sale deed in respect of the above said property in favour of the fourth respondent on 28.08.1992 itself. The first defendant did not have any title over the Aathinam property and the Sub Registrar ought not to have registered the same, since the patta in respect of the above said property stands in the name of the Tharumapuram Aathinam. The respondents collusively filed a suit, in which the petitioner is the necessary party.

3.Counter has not been filed on behalf of the first and second respondents. The counter filed by the 5th respondent, was adopted by 3, 4 and 6th respondents. In the counter, it is alleged that the first respondent / appellant and his mother had purchased the subject matter of the property under a registered sale deed dated 31.08.1981, constructed the building and sold the same to these respondents. But contrary to the above, now the petitioner projects a new claim, that too with a bald allegation that the first respondent has surrendered the possession to the Mutt after clearing all arrears. The said plea is against the case of the first defendant all along for the past 24 years. Further, even according to the affidavit filed by the petitioner, the right occurred to the petitioner is only from 10.06.2016 which was created after the appeal was posted for final hearing in the year 2011. Even after 24 years from the date of selling the property, now the first respondent in order to drag on the proceeding, colluded with the proposed petitioner and filed this petition.

4.The respondents 3 to 6 filed a suit in O.S.No.179 of 2005 on the file of the learned Additional District Munsif, Tiruchendur against the first respondent herein for declaration and recovery of possession and the same is pending. In the said suit, the first respondent herein filed a petition in I.A.No.58 of 2011 under Section 10 of CPC to stay the suit citing the pendency of the appeal



and the said petition was allowed on 28.02.2011 by granting stay to the suit.

5. Heard both sides.

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6. Before the trial Court, the first respondent Tensingh filed a suit as against the other respondents seeking the relief that the sale deed dated 28.08.1992 stands in the name of the third respondent, is null and void and further for the relief of injunction restraining the other respondents in interfering with the peaceful possession and enjoyment of the suit schedule property.

7. In the said suit, the claim of the first respondent is that by using the mortgage deed executed by him in favour of the deceased second respondent, the third respondent committed fraud and obtained the sale deed from the first respondent. It is the further case of the first respondent that he is in the suit schedule property till date. Only in the said circumstances, the petitioner/proposed sixth respondent filed this petition by stating that the suit property is the property of the Tharumapuram Aathinam. The said claim made by the petitioner is without any document.

8. It is the further case of the petitioner that as of now he entered into the possession of the suit property and thereby he is a necessary party to decide the suit. Accordingly, the petitioner steps into the shoes of the first respondent and filed this petition. In fact, the cause of action for the suit filed by the first respondent, is the date on which the second and third respondents committed fraud in respect to the suit property and the said cause of action does not survive on the proposed respondent. More than that, even admitting that the suit property is the property of Tharumapuram Aathinam without including the said person as a party to the proceeding, it is unnecessary to implead the petitioner as a party to the suit.

9. More than that, the stand taken by the petitioner is entirely different with the stand taken by the first respondent. In fact, the stand of the first respondent is that the said property is allotted in his favour in a partition dated 03.08.1981 made between him and his mother. So as per the said averments, the first respondent is the owner of the property. On the other hand, the petitioner filed this petition stating that Tharumapuram Aathinam is the owner of the property. In any way in respect to the petitioner, as already observed, is not having any cause of action. Accordingly, he is not a necessary party to decide the Second Appeal filed by the appellant.



10. In the result, the Civil Miscellaneous Petition is dismissed.

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01/08/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE ADDITIONAL DISTRICT MUNSIF,
TIRUCHENDUR

2. THE SUBORDINATE JUDGE, TUTICORIN.

+1. C.C. to M/S.G.PRABHU RAJADURAI, Advocate SR.No.12845

ORDER
IN
CMP(MD) No.2798 of 2019
IN
SA No.1480 of 2004
Date : 01/08/2019

cp
PK/PN/SAR-4/14.08.2019 : 4P/4C