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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD)No.202 of 2013

and

M.P.(MD)No.1 of 2013

1.K.S.Ramprasad

2.K.S.Rampriya

: Petitioners/Petitioners/Plaintiffs

.. Vs ..

1.K.S.Sriram

2.S.Subbulakshmi

3.M/s.Gremach Tes and Estates,
753, Anna Salai,
Chennai.

4.The Branch Manager,
Asset Recovery Management Branch,
Punjab and Sind Bank,
165, Thambu Chety Street,
Chennai - 600 001.

: Respondents 1 to 4/Respondents
/Defendants

5.The Manager,
M/s.Ind Bank Housing (Ltd),
480, Anna Salai, 2nd Floor,
Nandanam, Chennai - 600 035.

6.Dr.Vijayakumar : Respondents 5 & 6/Proposed
Respondents 5 & 6/
Proposed Defendants 5 & 6

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order passed by the learned Additional District and Sessions Judge, Dindigul, dated 06.07.2012 in I.A.No.100 of 2012 in O.S.No.17 of 2009 by allowing this revision petition.

For Petitioners

: Mr.D.Ramesh

<https://hcservices.ecourts.gov.in/hcservices/>

Respondents 1 to 4 ex parte



For Respondent 6 : Mr.B.Chandran
For Respondent 5 : No appearance
For Respondent 1 to 4-Exparte

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ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District and Sessions Judge, Dindigul in I.A.No.100 of 2012 in O.S.No.17 of 2009.

2.The revision petitioners, as plaintiffs, filed the suit in O.S.No.17 of 2009 for passing a preliminary decree for partition of their 1/2 share i.e., $\frac{1}{4}$ share each in the suit properties. The suit properties are Plot Nos.18 and 19 comprised in T.S.No.21 in R.S.No.25/Part-C ward in Block No.15, Kurunji Andavar Kovil Road, Kodaikanal Town. In the plaint, it is the case of the revision petitioners that the suit properties are the joint family properties of the Hindu joint family consisting of plaintiffs and defendants 1 and 2 as they were thrown into the common stock of the joint family. Stating that the properties which is referred to as Plot No.18 had been mortgaged by their father unauthorisedly and that the mortgagee's subsequent proceedings are not binding on the plaintiffs the suit was laid. It is to be seen that the suit was filed in 2008 after the suit properties Plot No.18 was sold pursuant to the proceedings initiated before the DRT and the sixth respondent in this Civil Revision Petition has purchased the property namely Plot No.18. The fifth respondent the Manager of M/s.Ind Bank Housing Ltd which has initiated recovery proceedings against the principal borrowers and the mortgagors succeeded in getting the property sold under the Debt Recovery Tribunal by orders of Debts Recovery Tribunal.

3.During the pendency of the suit, the revision petitioners filed I.A.No.100 of 2012 to implead respondents 5 and 6 in the Civil Revision Petition as parties. In the affidavit filed in support of the petition, it is stated that the suit properties namely Plot Nos.18 and 19 are the joint family properties and that the plaintiffs are entitled to a share. It is also contended that the sale in favour of the auction purchaser is not binding on them. The revision petitioners also stated that the plot which was purchased by the sixth respondent is adjacent to Plot No.19 in which the plaintiffs have $\frac{1}{4}$ share each. It is further stated that the joint family members have put up a construction which was lying both in Plot No.18 as well as in Plot No.19. It is in the said circumstances, it was stated that the presence of the respondents 5 and 6 herein are necessary for an effective adjudication and that all the issues that may arise can be adjudicated without giving room for any further litigation. The lower Court, however, taking note of the fact that the father of

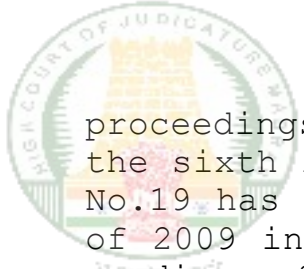


revision petitioners have mortgaged the property long back and the property itself has been sold in favour of the sixth respondent even before the filing of the suit, dismissed the petition as the petition lacks *bona fides*. It is also pointed out by the trial Court that the petitioners have not questioned the auction in a manner known to law within a reasonable time despite the fact that they had knowledge about the sale. It is against the order of the trial Court, the above revision petition is filed.

4.The learned Counsel appearing for the petitioners submitted that the petition to implead ought to have been allowed by the trial Court at least for the purpose of resolving the controversy and other issues that may arise for consideration in view of the fact that a single building has been constructed in such a way to fall both in Plot Nos.18 and 19. Since Plot Nos.18 and 19 cannot be segregated without the building, impleading of respondents 5 and 6 is absolutely necessary according to the learned Counsel for the petitioners.

5.The learned Counsel appearing for the sixth respondent has produced before this Court another order passed by the DRT in M.A.No.2 of 2009 in D.R.C.No.107 of 2004 in O.A.No.1131 of 2001. The revision petitioners have filed M.A.No.2 of 2009 for getting an order of injunction against the bank from selling the Plot No.18. In the said proceedings, it is seen that the revision petitioners have claimed that Plot No.19 as the property of joint family. Whereas Plot No.19 had also been mortgaged by the mother of the revision petitioners as her own property and that was also the subject matter of the sale pursuant to the recovery proceedings. However, Plot No.19 was proceeded against by a different bank for the amount due by the mother of revision petitioners. Taking into account the facts on record, the Recovery Officer dismissed the petition filed by the revision petitioners by holding that the case of the revision petitioners claiming title over Plot No.19 cannot be accepted having regard to the documents and admitted facts and circumstances. It is to be noted that the claim of petitioners against Plot No.19 was on the basis of a deed of declaration dated 27.01.2001 produced by the revision petitioners. The said document was produced by the revision petitioners to support their claim that the property belongs to Hindu undivided family. However, it was pointed by the Recovery Officer that the deed of declaration dated 27.01.2001 was attested by a notary who became a notary public after the execution of the document. It was therefore held by the Recovery Officer that the deed of declaration is a concocted and fabricated document for the purpose of claiming right by the revision petitioners.

<https://hcservices.gov.in/Bag/In/Service/1> 6. Before this Court, the learned Counsel appearing for the sixth respondent has submitted that the revision petitioners have no claim over Plot No.18 which is a subject matter of recovery



proceedings followed by issuance of sale certificate in favour of the sixth respondent. The claim of revision petitioners over Plot No.19 has also been negatived by the Recovery Officer in M.A.No.2 of 2009 in D.R.C.No.107 of 2004 in O.A.No.1131 of 2001. From the reading of the order dated 30.01.2009 passed by the Recovery Officer, it is seen that the revision petitioners have not produced any other records except the deed of declaration dated 27.01.2001 in support of their claim that the property belonged to joint family. Since the only document that was relied upon by the revision petitioners before the Recovery Officer was held to be a fabricated document, the application filed by the revision petitioners was dismissed. In such circumstances, the contention of the learned counsel appearing for the petitioners that there are other issues that may arise for consideration in the suit for partition filed by the revision petitioners regarding the construction that was put up by the co-sharers cannot be considered. Having regard to the fact that the revision petitioners' claim for Plot No.19 has also been found against them and that no other material is produced before this Court to find fault with the order of the Recovery Officer in the connected proceedings. This Court is unable to accept the case of the petitioners. The fact that the suit was filed after the sale deed in favour of sixth respondent would indicate that the revision petitioners have filed the suit with ulterior motive. In the present case, the property had already been sold in favour of strangers and the revision petitioners admit the title of the sixth respondent regarding Plot No.18. The revision petitioners' claim over Plot No.19 is not supported by any material to substantiate their case. As pointed out earlier the revision petitioners have also filed M.A.No.2 of 2009 even in the year 2009 and had suffered an order with the finding that the property comprised in Plot No.19 is not the property of the petitioners. Hence, this Court is unable to find any illegality or infirmity in the order of the lower Court dismissing the petition filed by the petitioners to implead the respondents 5 and 6 in the suit. The petitioners are trying to relitigate on issues which have been held against them.

7.As a result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)



To

The Additional District and Sessions Judge,
Dindigul.

+1 CC to M/s.B.CHANDRAN, Advocate (SR-49667[F] dated 26/02/2019)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-49918[F] dated 26/02/2019)

SRM

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