

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.3595 of 2013

and

MP.No.1 of 2013

1.Karthikeyan
2.Lavanya

... Petitioners

Versus

1.Palanisamy
2.Selvam
3.Veerappan
4.Pushparaj
5.Muthusamy
6.Palanisamy
7.Jayaraman

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the order and decretal order dated 02.08.2013 made in I.A.No.1238 of 2012 in O.S.No.448 of 2008 on the file of the Additional District Munsif Court, Namakkal.

For petitioners : Mr.T.Dhanyakumar
For Respondents : Mrs.Uma Maheswari
for Mr.C.Jagadish (for R1 & R2)
: No Appearance - R3 to R7

ORDER

The plaintiffs in the suit O.S.No.448 of 2008 are the revision petitioners.

2.The revision petitioners filed the above suit in O.S.No.448 of 2008, before the Additional District Munsif Court, Namakkal seeking the relief of declaration to declare that the sale deed executed in favour of the sixth defendant on 10.02.1993 is sham and nominal and will not bind them in any manner and for other reliefs including partition of the suit property.

3.The defendants have filed written statement opposing the relief sought for in the plaint by stating that the property was purchased in an auction conducted by the Court in REP.No.344 of

1992 in O.S.No.351 of 1987 on 10.02.1993. Such auction purchase could have been questioned in the Execution Proceedings, without doing so, the present suit has been filed.

4. Thereafter, the necessary issues were framed. Whereupon, PW.1 entered the witness box. At this juncture, the defendants 1 & 2 have filed an application in I.A.No.1238 of 2012, under Order XIV Rule 2(2) r/w Section 151 of CPC., seeking to consider certain additional issues with respect to limitation and non-joinder of necessary parties. According to the defendants 1 and 2, the suit is hit by the period of limitation, besides, while filing the suit, Suganthi, daughter of first defendant has not been impleaded, who is a proper and necessary party to the suit. Therefore, according to the defendants 1 and 2, these issues have to be taken up as a preliminary issue.

5. A counter affidavit has been filed by the plaintiffs to I.A.No.1238 of 2012 stating that the issues already framed are sufficient for determining the issues involved in the suit and the additional issues, sought to be framed, need not be considered. The plaintiffs were examined on 05.09.2012 and thereafter, the hearing of the suit was adjourned for several hearings for cross-examination and at this stage, the present application has been filed.

6. On consideration, the learned District Munsif Judge, Namakkal has allowed the application in part to the extent that Suganthi, daughter of first defendant, is necessary a party to be impleaded in the suit, however, rejected the other relief sought of limitation, on the ground that was already framed in issue Nos. 2 and 8 in respect of period of limitation. Being aggrieved by the same, the Civil Revision petition is filed by the plaintiffs, on the ground that the daughter of the first defendant cannot claim any individual share, when his father, the first defendant alone is entitled to a share in the property. Therefore, the Trial court ought not to have impleaded Suganthi as a party to the suit.

7. Heard the both sides. Admittedly there was a first round of litigation between the 5th defendant and the 6th defendant for recovery of money in O.S.No.351 of 1987, in which, a decree was obtained and for executing the same, REP.No.344 of 1992 was filed. During the Execution Proceedings, the property was brought to public auction, after filing necessary application and observing formalities auction was confirmed, in favour of the 6th defendant and now, the relief sought for in the suit is, the property was purchased by the 6th defendant in the Court auction has to be set aside.

8.The contention in the written statement is to the effect that without filing necessary application to set aside the auction in the above said REP.No.344 of 1992, a separate suit is not maintainable and also stated that the relief is barred by limitation and the daughter of the 1st defendant viz., Suganthi is also a necessary party, hence, the Trial Court has rightly allowed the application in part. The issue of limitation is already covered as under issue No.2 and 8 and therefore, the Trial court has rightly refused to consider the same to be tried as a preliminary issue.

9.Moreover, the issue of limitation is a mixed question of fact and law and the same cannot be tried as preliminary issue. Now, the point is Suganthi is a necessary party for adjudication or not. The contention of the plaintiff is that after the Court auction, the successful auction purchaser 6th defendant has sold to the property to defendants 1 and 2. It is collusive transaction in nature. But the same has to be decided, after evidence was let in during trial. In so far as impleading Suganthi as a party to the suit, as there was no issue framed and the respondents 3 to 5 and 7 therein were remain ex-parte and 6th defendant did not filed any written statement, Thus, the Trial Court has rightly decided to consider it as a preliminary. Thus, I do not find any reason to interfere with the same. Hence, the Civil Revision Petition is dismissed and the Trial Court is directed to take up the preliminary issue of non-joinder of necessary parties and pass orders on the same, within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif, Namakkal.

+1 cc to M/s.T.Dhanyakumar, Advocate Sr.No. 6928

+1 cc to M/s.C.Jagadish, Advocate Sr.No. 7008

AKM/04.03.2020/3P-4C /

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