

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2428 of 2018

and

C.M.P.No.14938 of 2018

V.Nandakumar

.. Petitioner

Vs.

1.V.Muniammal

2.Subramani

3.Adhimolam

4.Mohan

5.Vasanth

6.Tirupathi

7.Kalaimani

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 07.07.2018 in IA.No.89 of 2017 in OS.No.115 of 2014 on the file of the learned Additional District Judge, Hosur.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.K.S.Vaithianathan

ORDER

The plaintiff in O.S.No.115 of 2014 has come up with this Revision challenging an order made in I.A.No.89 of 2017, an application filed by the defendants in the said suit, seeking to implead the proposed parties. The suit in O.S.No.115 of 2014 was filed by the plaintiff seeking a declaration of his title and for injunction. The plaintiff claimed that the suit property along with a larger extent was purchased by his father late M.Krishnan and the first defendant under the sale deed dated 05.07.1982. According to the plaintiff, his father and the first defendant were in joint possession and enjoyment of the property till the year 2012. At a oral partition that took place in 2012, the property was divided into 'A' and 'B' Schedule. While 'B' Schedule property was allotted to the plaintiff's father, 'A' schedule property was allotted to the first defendant. The plaintiff's father had executed a registered settlement deed on 16.04.2012 settling the 'B' Schedule property that was allotted to him at the partition in favour of the plaintiff. Since the plaintiff is living at Vellore, his father was managing the property. The plaintiff's father died in a road accident on 03.12.2013.

Thereafter, the plaintiff visited the property during February 2014. He found that the first defendant had encroached upon the property. Hence, the plaintiff came up with the present suit.

2. The suit was resisted by the first defendant. The defendants 2, 3 & 4 who are the tenants under the first defendant remained Ex-parte. While admitting the joint purchase in the year 1982, the first defendant denied the partition said to have taken place in the year 2010. The first defendant would claim that there was an oral partition in the year 1991 itself with regard to the properties belonging to the plaintiff's father and the first defendant situate at Hosur and at Dharmapuri. According to the first defendant, the plaintiff's father gave up his right over the properties at Hosur, while the first defendant gave up her right over the properties at Dharmapuri. It is also claimed that this arrangement in the year 1991 was recorded in the form of an unregistered settlement on 17.09.2014 and the same was followed by a sale deed executed by the mother and the siblings of the plaintiff on 25.09.2014. Therefore, according to the first defendant the entire property at Hosur belongs to her and the plaintiff's father had no

right to execute the settlement in favour of the plaintiff on 16.04.2012 as claimed by the plaintiff. After the trial had commenced, the defendants came up with I.A.No.89 of 2017 seeking to implead the plaintiff's mother and siblings in the suit on the ground that they have an interest in the property. This was resisted by the plaintiff contending that they have no interest in the property. The plaintiff's sister, the 7th proposed party had already filed a suit for partition in which she had not chosen to include the suit property and therefore, according to the plaintiff, mother and the siblings of the plaintiff have no interest in the property. The plea of the first defendant that they have parted the property by way of a sale deed on 25.09.2014 was also pointed out by the plaintiff as a circumstance that would militate against the plea for impleading. The learned Trial Judge upon a consideration of the averments in the affidavit and the counter affidavit concluded that the question as to whether the proposed parties are necessary parties to the suit or not can be decided after trial and allowed the application. It is against the said order, the plaintiff has come up with this Revision.

3. Heard Mr.V.Lakshminarayanan, learned counsel for the

petitioner and Mr.K.S.Vaithianathan, learned counsel appearing for the respondents.

4. I am unable to sustain the order of the trial court. When a defendant in the suit seeks impleading of parties, it should be made out that those parties are either proper parties or necessary parties to the suit. The plaintiff comes to Court with a claim that there was an oral partition in the year 2012 and pursuant to the same, his father had settled the property on him under a registered settlement dated 16.04.2012. This plea was resisted by the defendant contending that the oral partition was not in 2012 and that it was in 1991 on completely different terms. It is his further contention that the mother and the siblings of the plaintiff had executed a sale deed in his favour in respect of the suit property. Having taken such a defence the defendant now seeks to implead the mother and the siblings of the plaintiff claiming that they are necessary parties. Once, the first defendant had come to court with the plea that siblings of the plaintiff had acknowledged the oral partition in the year 1991 under which he was given exclusive ownership of the property at Hosur, they lose any interest they had in the property. It is also pleaded in the written statement that the mother and the

siblings of the plaintiff had executed a sale deed in respect of a Hosur property, namely, the suit property on 25.09.2014. In the light of these two pleas taken by the first defendant, it is clear that even according to the first defendant the mother and the siblings of the plaintiff have no interest in the suit properties as on the date of filing of the application for impleading. It is not known as to why they are sought to be impleaded in the suit.

5. Mr.K.S.Vaithiyanadhan, learned counsel, would however contend that impleading is sought for to prove that the plaintiff's mother and other siblings had given up their right over the Hosur property, which was exclusively allotted to the first defendant even during the plaintiff's father's life time. It can be done by letting in evidence.

6. I do not find that the proposed parties are either necessary parties or proper parties in the suit. Admittedly, the plaintiff neither seeks any relief against the proposed properties nor any document executed by the proposed parties is being questioned by the plaintiff in the suit.

7. In the light of the above, the order of the trial court is liable to be interfered with and it is set aside. The application in I.A.No.89 of 2017 will stand dismissed. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.09.2020

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Internet: Yes/No

Index: Yes/No

To

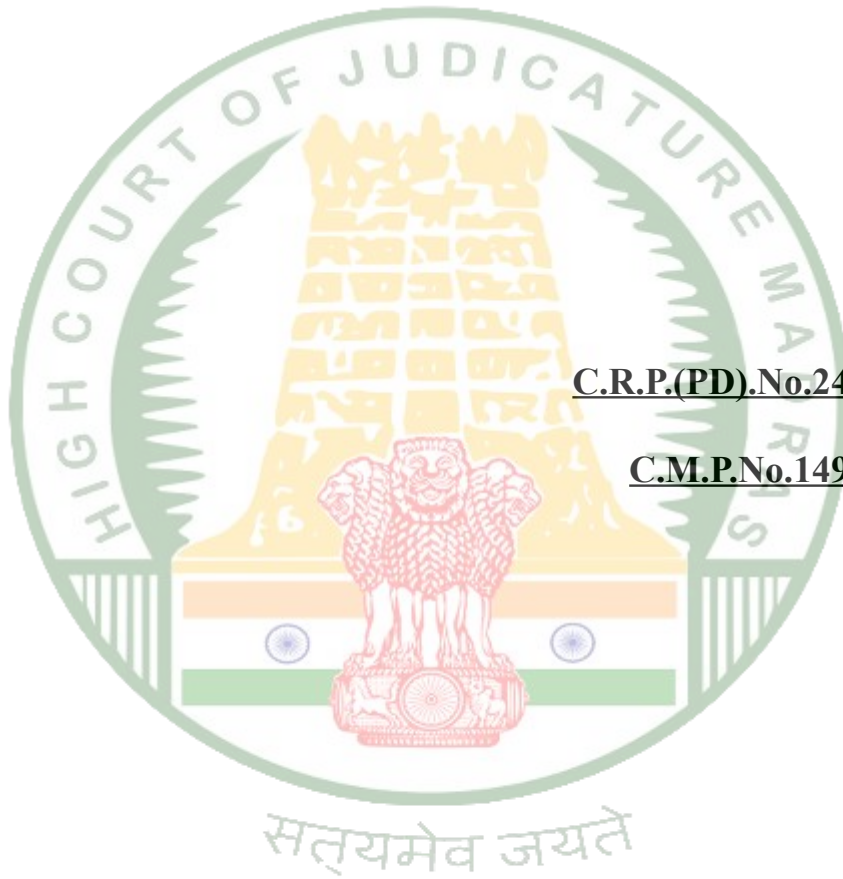
The Additional District Court,
Hosur.



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R.SUBRAMANIAN, J.

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