

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	12.10.2020
PRONOUNCED ON	16.10.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

&

THE HONOURABLE MR.JUSTICE M.S.RAMESH

O.S.A.NO.172 OF 2019

AND

C.M.P.NO.15217 OF 2019

1. K. Shivakumar
2. Mrs.Meena Shivakumar ...Appellants/Defendants 1 & 2

Vs.

M.V.Krishna Rao (Deceased)
1. Mrs.Seetharajakumari
2. M.B.V.Sathya Sai Prasad
3. M. Suriyanarayanamurthy
4. M.Bagya Suryalakshmi
5. M.B.L.Raghaventhra Swamy
6. Mrs.Uma Mageswari
7. Murugesan ...Respondents/Plaintiffs 2 to 7
& 3rd Defendant

Prayer: Original Side Appeal filed under Order 36, Rule 2 of Original Side Rules against the Order and Decreetal Order dated 27.02.2019 passed in Application No.1337 of 2019 in C.S.No.925 of 2010 passed by the learned single judge of this court and praying for setting aside the same.

For Appellants : Mr.S.Sadasharam

For Respondents: Mr.N.Srinivasalu

for R1 to R6

Mr.R.Ravi for R7

JUDGMENT

M.S.RAMESH, J.

The present appeal is called through Video Conferencing on 12.10.2020 and by consent of both the parties, the same is taken up for final disposal.

2. The brief facts of the case are as follows:

One, M.V.Krishna Rao has filed a suit in C.S.No.925 of 2010, seeking to declare the Sale Deed registered as document No.976 of 2010 as null and void, along with consequential reliefs.

Pending the suit, the sole plaintiff, namely M.V.Krishna Rao, died on 21.12.2010. The 3rd defendant, namely Mr.Murugesan, claiming rights over the suit property through a Will dated 24.12.2009, impleaded himself as a plaintiff, through an order dated 19.10.2011 passed in Application No.2171 of 2011 filed under Order 22 Rule 3 of the Code of Civil Procedure (hereinafter referred to as the 'Code'). The legal heirs of late M.V.Krishna Rao were also impleaded as plaintiffs along with Mr.Murugesan, through an order dated 19.07.2014.

3. As against the order impleading Mr.Murugesan as a plaintiff, O.S.A.No.23 of 2012 came to be filed, which was allowed by a Co-ordinate Bench of this Court and the matter was remitted back to the learned Single Judge for reconsideration. Consequently, by an order dated 05.12.2014 made in Application No.2171 of 2011, the said Mr.Murugesan came to be transposed as the 3rd defendant, instead of being a plaintiff. The challenge made to the order dated 05.12.2014 by the said Murugesan, was dismissed on 07.09.2015.

4. During the course of trial and after about 4 years, the appellants/ defendants 1 and 2 had filed a petition in C.M.P.No.3429 of 2019 seeking to condone the delay in challenging the order dated 05.12.2014 passed in Application No.2171 of 2011, whereby Murugesan was impleaded as the 3rd defendant. The application was dismissed by a Co-ordinate Bench of this Court on 11.02.2019. Thereafter, within 3 weeks, the appellants/ defendants 1 and 2 had filed an Application No.1337 of 2019 under Order 1 Rule 10(2) of the Code, to strike out Murugesan/3rd defendant, claiming to have been improperly impleaded as a party defendant. The said application was dismissed on 27.02.2019 by a learned Single Judge of this Court, as against which, the present appeal has been filed.

5. The learned counsel for the appellants/defendants 1 and 2 submitted that Murugesan/3rd defendant is a stranger to the suit, who claims right over the subject property through an alleged Will dated 24.12.2009 and since the Will was not probated, reliance cannot be placed on the said Will and consequently, Mr.Murugesan is neither a necessary nor a proper party to the suit claim.

6. Both the learned counsels appearing for the respondents, on the other hand, would submit that since Murugesan/3rd defendant was impleaded by an order of this Court made in Application No.2171 of 2011 under Order 22 Rule 3 of the Code, pursuant to the orders of the Co-ordinate Bench, his impleadment cannot be said to be improper and therefore, the present attempt by the appellants/defendants 1 and 2 to invoke Order 1 Rule 10 (2) of the Code, to strike off the name of Murugesan in his

capacity as the 3rd defendant on the ground that he has been improperly impleaded, cannot be sustained.

7. We have given our anxious and careful consideration to the submissions made by the respective counsels.

8. It is not in dispute that Murugesan came to be impleaded as the 3rd defendant, pursuant to the order dated 05.12.2014 made by the learned Single Judge in Application No.2171 of 2011. The order was passed pursuant to the direction of the Co-ordinate Bench made in O.S.A.No.23 of 2012 dated 20.11.2013. The challenge made to the order of the learned Single Judge dated 05.12.2014, impleading Mr.Murugesan as a 'defendant', was also dismissed by the Co-ordinate Bench, by an order dated 07.09.2015 passed in O.S.A.No.174 of 2015. The appellants/defendants 1 and 2, being aggrieved against the impleadment of Murugesan as 3rd defendant, had preferred the appeal after about 4 years and the same was dismissed by the Co-ordinate Bench on 11.02.2019 at the stage of condoning the delay itself. No further challenge was made to this order. In this background, the appellants/defendants 1 and 2 had moved the Application No.1337 of 2019 on 27.02.2019 under Order 1 Rule 10(2) of the Code, after about 16 days from the order of the Co-ordinate Bench dismissing their Application No.2171 of 2011 challenging the earlier order passed under Order 22 Rule 3 of the Code, impleading Murugesan as the 3rd defendant.

9. When any party to the suit is of the view that there are non-joinder or mis-joinder of parties in the suit, they are mandated to raise their objections at the earliest possible opportunity, as provided under Order 1 Rule 13 of the Code. However, if such a party is aggrieved against the impleadment of a plaintiff under orders passed by a Civil Court under Order 22 Rule 3 of the Code, the option available to such an aggrieved party is to challenge such an order of impleadment. In the present case, the appellants/defendants 1 and 2 have chosen to challenge the impleadment of Mr.Murugesan in the suit by filing an appeal against the order dated 05.12.2014 passed in Application No.2171 of 2011, before the Co-ordinate Bench of this Court, which was dismissed. It is in this background, the appellants/defendants 1 and 2 had filed the subsequent Application No.1337 of 2019 seeking to strike out the impleaded party, namely Murugesan/3rd defendant.

10. The learned Judge had rightly dismissed the Application No.1337 of 2019, stating that the earlier order dated 05.12.2014 made under Order 22 Rule 3 of the Code, has become final and that the appellants had not raised their objections at the earliest possible opportunity as contemplated under Order 1 Rule 13 of the Code.

11. In our view, the appellants/defendants 1 and 2 have attempted to indirectly achieve what they could not achieve directly, by invoking Order 1 Rule 10(2) of the Code to strike out Murugesan from being the 3rd defendant, while their earlier appeal made to the order passed under Order 22 Rule 3 of the Code, was dismissed. This is nothing but an act of mischief on the part of the appellants/defendants 1 and 2, which could also be considered to be a misuse of due process of law.

12. Insofar as the submission of the learned counsel for the appellants that Murugesan/3rd defendant is not a proper party, since his alleged claim of right over the subject property through a Will has not been probated is concerned, it is seen that in the written statement filed by Murugesan/3rd defendant dated 28.09.2016, he had prayed that the suit be provisionally allowed in his favour, subject to production of probate of the Will dated 24.12.2009, through which he claims right over the property. In the same written statement, he has also mentioned that he has already initiated steps for having the Will probated. While that be the case, we do not find any justification in the ground raised by the appellants that the 3rd defendant has to be thrown out of the suit proceedings, on the sole ground that the Will has not been probated. It is needless to point out that the non-production of the probated Will, prior to the conclusion of the suit proceedings, will have its own legal consequences and that the ground raised by the appellants in this regard, cannot be sustained.

13. The learned Single Judge, in our considered view, has dealt on all these aspects and has rightly come to the conclusion in the impugned order dated 27.02.2019, that the application filed by the appellants/defendants 1 and 2 under Order 1 Rule 10(2) of the Code deserves to be dismissed and has accordingly done so. We have no hesitation to concur with the findings of the learned Single Judge.

14. Accordingly, the present Original Side Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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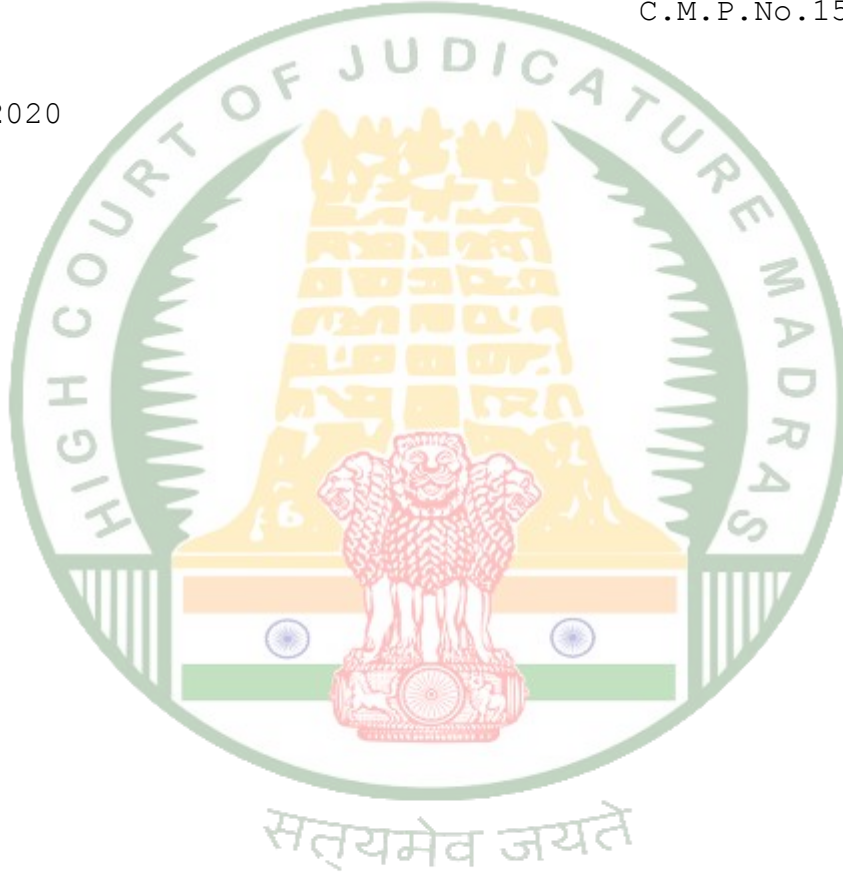
To

The Sub Assistant Registrar,
Original Side Section,
High Court, Madras-104.

+1cc to Mr.S.Sadasharam, Advocate, S.R.No.34593
+1cc to Mr.R.Ravi, Advocate, S.R.No.34506
+2cc to Mr.N.Srinivasalu, Advocate, S.R.No.34494

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