

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 27.11.2020]

[ORDERS PRONOUNCED ON : 15.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.2033 of 2020

and

C.M.P.No.12775 of 2020

C.Babu

... Petitioner

.. Vs ..

1.C.Janaki
2.D.Kalaichelvi
3.C.Kumar
4.V.Vijayakumari
5.C.Manikandan
6.M.Jones
7.S.Raja Mohammed`

... Respondents

PRAYER: Petition filed under Article 227 of Constitution of India, praying, to set aside the fair and decreetal order dated 12.10.2020 in I.A.No.4 of 2019 in O.S.No.9368 of 2009 on the file of the XV Assistant City Civil Court, Chennai and consequently allow the Interlocutory application in I.A.No.4 of 2019 in O.S.No.9368 of 2009 on the file of the XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.S.Viswanathan
For Dass and Viswa Associates
For Respondents : Mr.R.Ramesh

ORDER

The third defendant is the revision petitioner herein.

2. Initially the petitioner's father filed the suit against the 6th respondent for Permanent Injunction restraining him from interference of his father's peaceful possession and his enjoyment of the suit property. Pending the suit, the 6th respondent sold the suit property to the 7th respondent, therefore, the petitioner's father filed a petition for amendment of suit prayer to declare the said sale deed as null and void and the same was dismissed. Against dismissal of the Interlocutory Application, a Civil Revision Petition was filed before Hon'ble High Court of Madras in C.R.P.No.1563 of 2017. While pending the civil revision petition, the petitioner's father died on 01.11.2017 leaving the petitioner and the respondents 1 to 5 as his legal heirs. When such being so, the above said civil revision petition was dismissed by its order dated 10.12.2019 with direction to the trial Court to dispose of the same within three months.

3. In the meantime, the respondents 1 to 5 filed an application in I.A.No.1373 of 2018 in the above suit to implead them as the plaintiffs, since there is no cordial relationship between the petitioner and the respondents 1 to 5, they made the petitioner as the 3rd defendant in the above suit. The suit was uncontested as the respondents 1 to 5 colluded with the respondents 6 and 7. Taking into consideration of the above fact, the petitioner filed an Interlocutory Application in I.A.No.4 of 2019 under Order XXIII Rule 1-A of C.P.C to transpose the petitioner as the plaintiff from the 3rd defendant to contest the suit effectively.

4. In the said Interlocutory Application, the respondents 1 to 5 and the respondents 6&7 filed their counter, wherein, they categorically admitted that there is no cordial relationship between the petitioner and the respondents 1 to 5. That apart, to strengthen the apprehension of the petitioner, the respondents 6&7 marked a forged and fabricated document as if the petitioner has received a consideration amount and signed in the document. The said averment is not only made by the respondents 6&7 but also by the respondents 1 to 5. That apart, from perusal of the entire averments of the counter filed by the respondents 1 to 5, it strengthen the case of the respondents 6 & 7 (defendants 1&2).

But the trial Court has dismissed the transpose application of the petitioner in I.A.No.4 of 2019 in O.S.No.9368 of 2009 on the file of the XV Assistant City Civil Court, Chennai in its order dated 12.10.2010. If the respondents 1 to 5 are permitted to conduct the suit, they cannot be expected to protect the petitioner's interest.

5. The learned counsel for the petitioner has submitted that after the death of his father, mother and sisters are not conducting the case properly and wantonly they are impleaded themselves as a plaintiff L.R original plaintiff and impleaded him as a third defendant in the suit and now they have abandoned case and not conducting the case which will affect his right being a L.R of the deceased original plaintiff- A.Chandrashekar. Accordingly, he filed the said application to dispose him from the defendant rank to the plaintiff and the same was rejected and hence prayed for setting aside the order.

6. The learned counsel for the respondent/purchaser could contend that originally a suit was filed for bare injunction. Subsequently it was amended as one for declaration of title and for Permanent Injunction. Pending suit the original plaintiff Chandrasekaran died. Subsequently, he was on record and there was a settlement and the

plaintiffs have appeared to withdraw the case and however after receiving the amount of settlement the son of the deceased plaintiff is now demanding more amount leading to litigation.

7. It is seen from the records that during the enquiry in I.A.No.4/2019, the mother of the petitioner herein filed a document Exhibit R1 whereby they have entered into a compromise. The said contesting respondent after accepting Rs.30 lakhs in which the plaintiff/petitioner herein also alleged to have signed as one of the party disputing his signature in the said settlement, the petitioner herein also filed I.A.No.5 of 2019 the said I.A is only to demark the said document marked in the enquiry.

8. In view of the specific allegation alleged by the petitioner herein that his signature is forged and document is fabricated, the learned trial Judge has allowed I.A.No.5 of 2019. It appears that the contesting respondent has not filed any C.R.P against the said order.

9. The learned counsel for the caveator could contend that a settlement has been reached and subsequently the petitioner is now demanding huge amount and hence he has filed the application.

10. After hearing the rival submissions and the initial round of litigation between the petitioner's father and the L.R namely widow and daughters. The son is shown as a third defendant and impleaded as a third defendant at the instance of the mother. Now, his son the petitioner herein alleged that his mother and daughters have entered into a compromise and received the amount abandoned the suit hence he filed application under Order 23 Rule 1(a) of C.P.C to transpose him from the defendant to the party plaintiff.

11. The order 23 Rule 1-A C.P.C states that "When transposition of defendant as plaintiffs may be permitted:- Where a suit is withdrawn or abandoned by a plaintiff under Rule 1 and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court shall in considering such application, have due regard to question whether the applicant has a substantial question to be decided as against any of the other defendants".

12. Order 23 Rule 1A clearly says that when the suit is withdrawn or abandoned by the plaintiffs and when there is a substantial question of law has to be decided as against any of the other defendants then the other defendant can be transposed as the plaintiff. Here is the

case, the plaintiffs i.e., the respondents 1 to 5 by their act of commission and omission abandoned the suit to be decided against this petitioner. Under such circumstances, dismissal of transpose petition.

13. In view of the fact of the petition herein is none other than one of the legal representative of the deceased plaintiff who was initially impleaded as a defendant by none other than his own mother and sister now.

14. It appears that the subsequent plaintiffs are not conducting the case in the proper prospect being a L.R of the deceased plaintiff is entitled to transpose himself as a co-plaintiff.

15. Accordingly, the order passed by the trial Court is set aside and the I.A.4/2019 is allowed and the third defendant in the suit is transpose as co-plaintiff and the trial Court is hereby directed to dispose of the case within a period of six months from the date of receipt of a copy of this order. It is hereby made clear that the allegation some settlement between the contesting respondent and the mother and other legal representatives of the Chandrasekar is left open to be decided by the trial Court. All the other contentions are left open.

16. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P is closed.

15.12.2020

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Speaking Order: Yes/No

Internet: Yes/No

To

The XV Assistant City Civil Court, Chennai

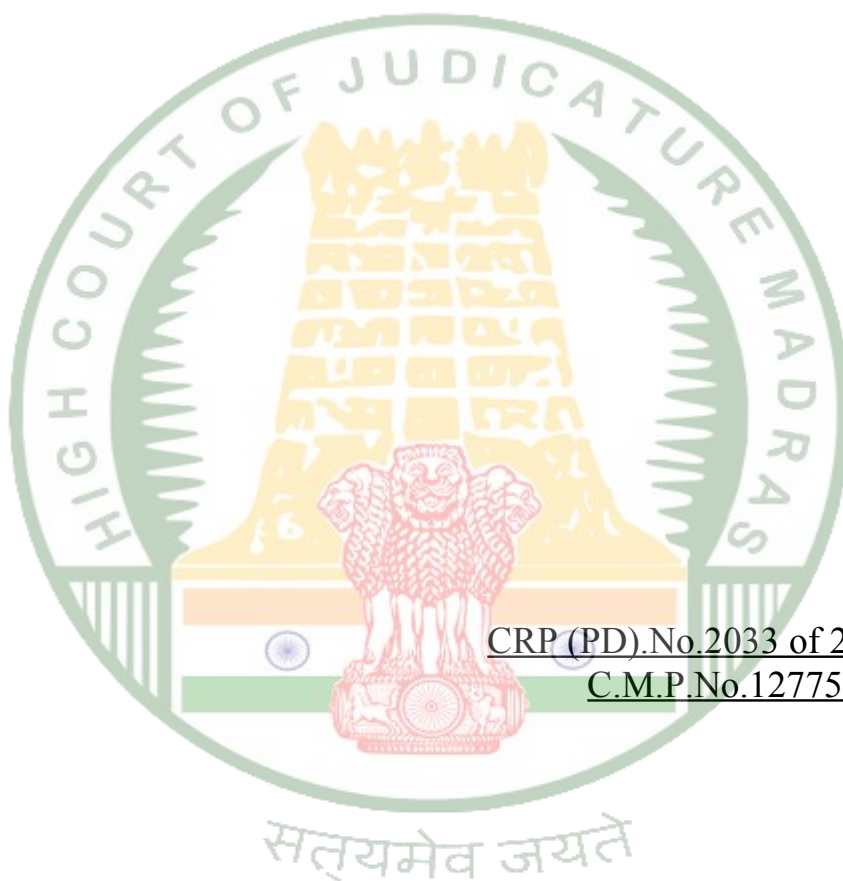


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RMT.TEEKAA RAMAN,J.,

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