

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.02.2020

Judgment Pronounced on : 01.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.No.430 of 2008

and

M.P.No.1 of 2008 and 1, 2, 3 and 4 of 2011

Rajeswari Ammal ..Petitioner/Appellant/Defendant

Vs.

P.Kanniappan ..Respondent/Respondent/Plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1906, against the order and decretal order dated 30.03.2007 in C.M.A.No.85 of 2005, against the order made in I.A.No.23649 of 2003 in O.S.No.5478 of 1995, on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Chennai.

For Petitioner : Mr.T.A.Srinivasan
For M/s.Sree Associates
For Respondent : Mr.O.Padmaprakash

ORDER

By an order, dated 08.01.2020 made in M.P.Nos.1,2 and 3 of 2011 in this Civil Revision Petition, one Mr.Nadanavelu is ordered to be impleaded as legal heir of the sole revision petitioner and in the subsequent hearings, it was brought to my knowledge that there was a suppression of material facts regarding the counter filed in the miscellaneous petitions. After perusing the counter filed in the said MPs and also taking note of the fact that the alleged legalheirship of the said Nadanavelu as the legal heir of the deceased original revision petitioner/Rajeswari Ammal is subject matter of the CRP.151 of 2010.

2. It is to be stated that after hearing both sides, namely, learned counsel for the revision petitioner and the respondent, respondent Kanniappan died and LR application had been filed. After hearing the rival parties, the original respondent herein filed the suit in O.S.No.5478 of 1995 on the file of the Additional District and Sessions Judge, Fast Track

Court No.I, Chennai., against the Revision Petitioner, praying for permanent injunction to not to interfere with her present physical condition of the suit schedule property and the matter was posted for cross examination of PW.1 on 17.12.2003. As there was a dilatory tactics to drag on the proceedings, the trial Court recording the reasons has allowed the suit exparte and hence the said Rajeswari Ammal filed I.A.No.23649 of 2003 seeking to set aside the exparte decree and the same was dismissed on 21.02.2004. Aggrieved by the said order of dismissal, dated 21.02.2004, a Civil Miscellaneous Appeal in |C.M.A.No.85 of 2005 was preferred which also got dismissed on 30.03.2007 and hence this Civil Revision Petition.

3. Heard both side counsels and perused the records.

4. The suit schedule property was originally owned by Balasundaram by virtue of partition deed dated 09.05.1979 registered as Document No.531 of 1979 and it is alleged he had married with Rajeswari after the demise of his first wife Angaiyarkanni. One Thandavamoorthy is the son of the said Balasundaram through his first wife. The said Thandavamoorthy died on 24.05.1993 intestate leaving behind his wife Saraswathi. After the death of Thandavamoorthy, the said Saraswathi, his wife left the matrimonial home and joined her parents. The said Saraswathi sold the entire suit schedule property to the respondent herein. The revision petitioner herein filed a suit in O.S.No.9091 of 1994 before the II-Assistant Judge, City Civil Court, Chennai, seeking to declare the sale deed dated 20.05.1994 registered as Document No.894 of 1994, SRO, Periamet executed in favour of the respondent as void and the said suit was decreed on 29.01.1998 as prayed for against which the respondent herein preferred an appeal in A.S.No.19 of 2000 and the same is pending disposal.

5. At this juncture, the purchaser, namely, Kanniappan, who had purchased the entire property from the sole heir of the said Balasundaram, namely, Saraswathi has filed O.S.No.5478 of 1995 for an injunction not to interfere with his peaceful possession and the suit was decreed exparte and the application to set aside the exparte decree was also dismissed and hence Rajeswari Ammal filed the above Civil Revision Petition. Pending Civil Revision Petition, she died without any issues.

6. M.P.Nos.1, 2 and 3 of 2011 are filed to condone the delay of 853 days in filing the application to set aside the abatement caused due to the death of Rajeswari Ammal and to set aside the abatement and to bring the petitioner, namely, Nadanavelu as legal heir of the revision petitioner since he looked after the said Rajeswari Ammal and she treated him as her

son and he claims that he is also the son of the deceased Balasundaram and hence he wanted to continue the Civil Revision Petition. In view of the order passed in C.R.P.No.151 of 2010 filed along with this CRP, on the ground that though he claimed he is the legal heir of the said Balasundaram since he was treated as a son by the original revision petitioner Rajeswari Ammal is a wrong claim and hence this Court has directed the competent Court to hold an enquiry as to the alleged legal heirship of the said Nadanavelu.

7. In the result,

(a) Orders passed in the M.P.Nos.1, 2 and 3 of 2011 dated 08.01.2020 is hereby suo motu recalled and hereby withdrawn for the reasons stated above. Since the legal heirship of the said Nadanavelu is not yet decided, the Civil Revision Petition stands closed as abated. No Costs.

(b) The above M.P.Nos.1, 2 and 3 of 2011 are closed and connected M.P.No.1 of 2008 is also closed.

(c) The Order dated 08.01.2020 made in M.P.No.4 of 2011 is to bring the legal heirs on record of the deceased sole respondent, where the legal heirship of the proposed parties are not in dispute and hence the said order made in M.P.No.4 of 2011 hereby remains intact.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.I,
Chennai.

Copy to:

The Section Officer,
Vernacular Records,
Madras High Court,
Madras.

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Pre-delivery
Order made in
C.R.P.No.430 of 2008

VSN-II (CO)
RV(28/10/2020)