

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD). No. 116 of 2017
and C.M.P. No. 545 of 2017

1.Kumaresan
2.Mayakannan
Selvaraj @ Rajendran (Deceased) ...Petitioners

Vs

1.Krishnan
2.Perumal
3.Bopathi ...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order of the learned Subordinate Judge of Attur dated 01.07.2016 passed in I.A. No. 269 of 2016 in I.A. No. 24 of 2012 in O.S. No. 85 of 2009 on the file of the Subordinate Judge of Attur.

For Petitioners : Mr.A.Rajakumar

For Respondents : Mr. R. Vasudevan (For R1 & R2)
for M/s. E. Kannadasan

No appearance (For R3)

ORDER

The matter is heard through "Video Conferencing".

This Civil Revision Petition is filed to set aside the fair and decretal order dated 01.07.2016 passed in I.A. No. 269 of 2016 in I.A. No. 24 of 2012 in O.S. No. 85 of 2009 on the file of the Sub Court, Attur.

2. Though notice has been served on the 3rd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

3. Heard the learned counsel appearing for the petitioners as well as the respondents 1 and 2 and perused the materials available on record.

4. The petitioners are plaintiffs in O.S. No. 85 of 2009. They filed the

said suit against their father Selvaraj @ Rajendran and 3rd respondent herein for partition and separate possession of their 2/3rd share in the suit properties and for permanent injunction restraining their father from alienating the suit properties either to the 3rd respondent or to anybody else. An exparte decree was passed on 21.02.2011. The petitioners filed I.A.No. 24 of 2012 for appointment of an Advocate Commissioner to inspect the suit property for the purpose of passing final decree. The respondents 1 and 2 objected for appointment of the Advocate Commissioner to inspect the suit property on the ground that they have purchased the property from grandfather, grand mother and father of the petitioners. They filed petition in I.A.No.269 of 2016 in I.A.No.24 of 2012 in O.S.No.85 of 2009 for impleading them as respondents 3 and 4 in I.A. No.24 of 2012 and defendants 5 and 6 in O.S. No.85 of 2009.

4 (a) According to the respondents 1 and 2, the entire suit property is not ancestral property and petitioners' grandfather Palanimuthu purchased half of the suit property by a sale deed dated 29.08.1962 bearing document

No.3569 of 1962 from one Kuppa Gounder, son of Arya Gounder. During his life time, he sold half of the property purchased by him to one Muthusamy Gounder and by will, bequeathed other half of the property to father of the petitioners. After the death of Palanimuthu, grandfather of the petitioners, the father of the petitioners became absolute owner of the suit properties. According to the respondents 1 and 2, they purchased the portion of the property from the father and grandfather of the petitioners and also from one Chellammal, wife of Muthusamy Gounder and filed petition for impleading them in I.A. No. 24 of 2012 as respondents 3 and 4.

4(b) The petitioners did not file counter affidavit. The learned counsel appearing for the revision petitioners submitted that the petitioners filed counter affidavit in Section on 17.06.2016. Due to boycott, the counsel for the petitioners did not appear on the date of hearing of I.A. No. 269 of 2016. The respondents have no locus standi to file a petition in the final decree petition. The order of the learned Judge is erroneous.

4(c) The learned Judge considering the averments in the affidavit and documents filed by the respondents 1 and 2, allowed the petition filed, by impleading the respondents 1 and 2 as respondents 3 and 4 in I.A. No.24 of 2012, filed for final decree. The learned Judge considering the above averments and documents, held that respondents 1 and 2 have interest in a portion of the suit property and it cannot be said that the petitioners 1 and 2 do not have any share in the suit property as alleged by the respondents 1 and 2 and allowed the petition for impleading the respondents 1 and 2 as respondents 3 and 4 in I.A. No. 24 of 2012, filed by the petitioners for final decree. The contention of the learned counsel appearing for the petitioners is that the learned Judge, prejudged the issue, failed to see that the respondents 1 and 2 have no locus standi and by the impugned order, the petitioners are prejudiced. The above contentions are without merits as the learned Judge has allowed I.A. No.269 of 2016 only after considering the averments in the affidavit and documents filed by the respondents 1 and 2 and has given valid reason for allowing the petition. There is no irregularity or illegality in the

order of the learned Judge warranting interference by this Court.

5. In the result, this Civil Revision Petition is dismissed. I.A.No.24 of 2012 filed by the petitioners is pending from the year 2012. Hence, the learned Subordinate Judge, Attur, is directed to dispose of the petition within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

To

The Subordinate Judge,
Attur.

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