

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 3256 of 2018

and

C.M.P.No. 18501 of 2018

C.Kumaravel

...Petitioner

Vs.

1.A.Saifudeen
2.M.Govindasamy
3.K.Jothilingam
4.D.Santhakumari Nelson
5.P.Gopal
6.Kaliyammal
7.Angammal
8.Govindamma
9.Sulochana
10.Shanmugam
11.Selvi
12.P.Sekar

...Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decreetal order dated 24.04.2018 passed in I.A.No. 180 of 2017 in A.S.No. 101 of 2015 by the Principal District Judge, Salem.

For Petitioner : Mr.M.Ravibharathi

For Respondents : Mr.T.R.Rajaraman for

Mrs.Veena Suresh for R1 to R5
R6 to R12 – No Appearance

ORDER

The 7th plaintiff in O.S.No. 18 of 2008, who is the 7th respondent in A.S.No. 101 of 2015 has come up with this revision challenging an order dismissing his application for revocation of leave to file an appeal granted to the appellant.

2. It is seen from the records that the petitioner along with six others filed a suit for declaration of his title and consequential permanent injunction restraining the defendants in the said suit namely, Angammal @ Lakshmi and Sekar from interfering with their possession. The said suit was decreed exparte by the Trial Court on 21.04.2009. In the meanwhile, the respondents 1 to 3 here in had filed a suit in O.S.No. 209 of 2009 against the plaintiffs in O.S.No. 18 of 2008 and several others seeking declaration of their title and permanent injunction. Both the suits relate to the same properties.

3. The second suit namely, O.S.No. 209 of 2009 is said to be

pending. While so, claiming that the petitioner and the other plaintiffs in O.S.No. 18 of 2008 have, misusing the decree, launched criminal proceedings against the respondents 1 to 5 and also other civil proceedings the respondents 1 to 5 filed an application in I.A.No. 266 of 2015 before the District Court, Salem seeking leave to file an appeal against the decree in O.S.No. 18 of 2008. The said application was allowed by the Trial court and the appeal was numbered as A.S.No. 101 of 2015. Upon service of notice in the appeal, the petitioner, who was the 7th defendant in O.S.No. 209 of 2009 filed the instant application seeking revocation of leave granted. The Trial Court dismissed the said application.

4. I have heard Mr.M.Ravibharathi, learned counsel for the petitioner and Mr.T.R.Rajaraman for Mrs.Veena Suresh, learned counsel for the respondents 1 to 5. Notice to the other respondents is deemed unnecessary as they are co-respondents, in the appeal, along with the petitioner.

5. Mr.M.Ravibharathi, learned counsel for the petitioner would vehemently contend that when the suit filed by the respondents 1 to 3 is pending as O.S.No. 209 of 2009, they need not challenge the decree in

O.S.No. 18 of 2005 by way of an appeal. According to him, two parallel proceedings cannot be permitted to go on regarding the same properties.

6. Contending contra, Mr.T.R.Rajaraman, learned counsel for the respondents would submit that the appeal came to be filed because of the attempted misuse of the exparte decree by the petitioner and the others against these respondents 1 to 5. He would also point out that the petitioners and others armed with the exparte decree had launched various proceedings including criminal proceedings in this Court. The said proceedings are not against the defendants in O.S.No. 18 of 2008 alone. The Appellate Court, upon consideration of the relevant records and the proceedings launched by the petitioner and others before the criminal Court, has come to the conclusion that the petitioner and others are attempting to use the exparte decree against the appellants in the appeal. On the said findings, the learned Appellate Judge concluded that the application for revocation of leave should be dismissed.

7. I am unable to countenance the submissions of the learned counsel for the petitioner. Though the decree in O.S.No. 18 of 2008 is not

against the respondents 1 to 5 herein, it is seen from the records that the the plaintiffs in O.S.No. 18 of 2008 are attempting to use the said decree against the respondents 1 to 5 herein by launching various proceedings. Therefore, being persons affected, they are entitled to maintain an appeal against the exparte decree, eventhough they are not parties to the decree.

8. I am therefore, of the opinion that the Apellate Court was perfectly justified in rejecting the request for revocation of leave and I do not see any grounds to interfere with the order of the Appellate Court dismissing the application for revocation of leave. This civil revision petition therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

16.12.2020

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Internet:Yes

Index:No

Speaking

To:

The Principal District Court,
Salem.

C.R.P(NPD)No. 3256 of 2018
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R.SUBRAMANIAN, J.

KKN



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