



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.85 of 2020

and

C.M.P. (MD)No.409 of 2020

Mani : Revision Petitioner/1st Respondent/Plaintiff

.. Vs ..

1.Palaniammal

2.Dhanalakshmi : Respondents 1 and 2/Petitioners/
Proposed Respondents 4 and 5

3.Vengan

4.Kumaravel

5.Chinnathambi : Respondents 3 to 5/Respondents 2 to 4/
Defendants 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 04.04.2018 passed in I.A.No.12 of 2016 in O.S.No.94 of 2013 on the file of Sub Court, Vedasanthur.

For Petitioner : Mr.R.S.Sivaram

For Respondents 1 & 2 : Mr.J.Madhu

For Respondents 3 to 5 : Mr.S.Vinod Sathya

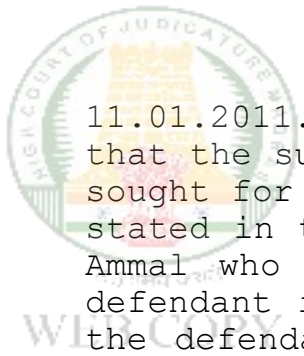
ORDER

This Civil Revision Petition is directed against the order passed by the learned Sub Judge, Vedasanthur in I.A.No.12 of 2016 in O.S.No.94 of 2013.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The revision petitioner is the plaintiff in the suit in O.S.No.94 of 2013 on the file of Sub Court, Vedasanthur. The said suit is for specific performance of an agreement of sale dated

<https://hcservices.ecourts.gov.in/hcservices/>



11.01.2011. The case of the revision petitioner in the plaint is that the suit property for which the specific performance relief was sought for belonged to defendants in the suit. To be precise, it is stated in the plaint that the suit property belonged to one Aarayee Ammal who is the mother of defendants 2 and 3 and wife of first defendant in the suit. It is stated that the property belonged to the defendants after the death of the said Aarayee Ammal. During the pendency of the suit, some third parties, namely, respondents 1 and 2 herein filed an application to implead them as parties in the suit in O.S.No.94 of 2013. In the petition filed for impleading themselves as parties, the respondents 1 and 2 admitted that the suit properties belonged to the mother of the proposed parties, namely, late Aarayee Ammal by virtue of the registered sale deed dated 03.10.1985. It is stated that the mother of proposed parties, namely, Aarayee Ammal, died on 09.01.1998 and that the suit properties are inherited by the proposed parties along with defendants 1 to 3. Though the proposed parties claimed only 2/5 share in the suit property, their claim as co-owners along with defendants 1 to 3 is not seriously disputed. The proposed parties have stated that the plaintiff and defendants 1 to 3 are instrumental for filing a collusive suit on the basis of a fabricated agreement of sale. It is stated by the proposed parties in the affidavit filed in support of the petition to implead themselves as parties that they have filed a suit for partition of 2/5 share in O.S.No.82 of 2013 and that the present suit is filed clandestinely without disclosing the right of other co-owners. This Court is unable to find any valid defence to the claim of proposed parties that they are also co-owners along with defendants 1 to 3 in the suit in O.S.No.94 of 2013. No doubt, it is true that the suit for specific performance is on the basis of the suit agreement which is between the plaintiff and the defendants 1 to 3 in the suit who are the signatories to the agreement of sale. However, the suit property was also a subject matter of partition suit. It is admitted that a preliminary decree was also passed in the said suit for partition. It is also admitted that the plaintiffs in the present suit in O.S.No.94 of 2013 have preferred an appeal as against the preliminary decree in the suit in O.S.No.82 of 2013 and the appeal was also dismissed confirming the judgment. No further appeal is pending as on date. The plaintiff on the basis of the sale agreement has filed the present suit for specific performance. The nature of judgement and decree in the earlier suit for partition is not disclosed. It is to be noted that the first defendant has filed a written statement which would defeat the rights of other sharers in the suit for partition. Even in the written statement, the decree in the suit in O.S.No.82 of 2013 is not disclosed. In such circumstances, the allegation that the suit in O.S.No.94 of 2013 is a collusive one cannot be disbelieved. Having regard to the above stated facts, this Court is of the view that validity of the sale agreement and its enforceability have to be gone into to avoid multiplicity of proceedings. In such circumstances, the order of

<https://hcservices.courts.gov.in/hcservices/> showing the petition filed by the proposed parties to



implead themselves as parties in the suit cannot be faulted. As a result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

SRM

To
The Sub Judge,
Vedasanthur.

C.R.P. (MD)No.85 of 2020

19.08.2020

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