



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P(MD) No.148 of 2020
and C.M.P(MD)No.825 of 2020

Shanmugavel ... Petitioner/Petitioner/6th Defendant

Vs.

1.Chandrasekar ...1st Respondent/Plaintiff

2.Jayalakshmi

3.Ajaysamy

4.Vijay

5.Deepa

... Respondents 2 to 5/Respondents/
Defendants 2 to 5

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order daed 18.10.2019 in I.A.No. 1 of 2019 in O.S.No.40 of 2014 on the file of the 1st Additional District Court, Thoothukudi.

For Petitioner: Mr.G.Prabhu RAjadurai

For R1 : Mr.F.X.Eugene

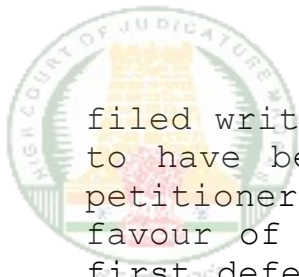
For R3 to R5 : No appearance

O R D E R

The first respondent filed the suit against one Kandasamy as the first defendant and the defendants 2 to 5, who are the wife, 2 sons and 1 daughter of Kandasamy. The first defendant is said to have executed a Will in favour of the petitioner/the sixth defendant. After the death of the first defendant, the petitioner was impleaded as the sixth defendant. Even during the life time of the first defendant, the petitioner filed a counter claim against the plaintiff/the first respondent herein. Now the petitioner has filed the application in I.A.No.1 of 2019 to amend the written statement filed by the first defendant after the death of the first defendant. The trial court dismissed the said petition.

2. Challenging the said order of dismissal, the petitioner/the sixth defendant is before this Court.

3. The learned counsel for the petitioner would submit that <https://hccvisn.org/courts/tgcn/hccvisn> concerning the pendency of the suit, the first defendant himself has

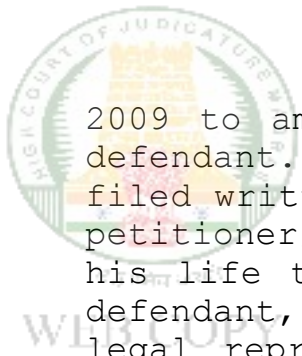


filed written statement. He has also challenged the sale deed said to have been executed in favour of the plaintiff. Therefore the petitioner has also made a counter claim that the sale executed in favour of the plaintiff is null and void. After the death of the first defendant, as a legal representative, he has been impleaded as one of the defendant namely the sixth defendant in the suit and he wanted to contest the suit and therefore, he has filed a petition to amend the written statement to some extent. Therefore, unless the written statement amended, he cannot raise the plea of the Will and also the validity of the sale deed. The learned trial Judge failed to consider the subsequent event, development and the role of the present petitioner and dismissed the petition, which warrants interference by this Court.

4.The learned counsel for the first respondent/plaintiff would submit that when the first respondent/plaintiff proposed to purchase the property from the first defendant, he came to know that there was charge against the defendants 2 to 5 and the first defendant told that he gave Rs.25 lakhs for the marriage expenses of the fifth defendant and there is no charge against the defendants 2 to 5 with regard to the suit property. On believing the same, even during the life time of the first defendant, the plaintiff purchased the property from the first defendant. Therefore the first respondent/plaintiff is a *bonafide* purchaser. Thereafter, the plaintiff came to know that the charge against the defendants 2 to 5 was not discharged. Since the defendants colluded together and demanded Rs.50 lakhs to discharge the charge, the plaintiff has filed the present suit. Now the petitioner/the sixth defendant is a legatee of the Will said to have executed by the first defendant in favour of the petitioner herein. Therefore, he cannot amend the written statement filed by the first defendant and he can only step into the shoes of the first defendant. He cannot take independent stand. Therefore, the order of the trial Judge does not warrant interference by this Court.

5. Heard both sides and perused the records.

6. On a careful perusal of the records, it is seen that the suit was filed by the first respondent herein, as plaintiff, against the first defendant Kandasamy and his wife, 2 sons and one daughter, who were arrayed as the defendants 2 to 5. Even during his life time and after service of notice, the deceased first defendant has filed a written statement and also a counter claim. The first defendant died in the year 2014. After the death of the first defendant in the year 2015, the petitioner was impleaded as the sixth defendant. Now the trial has commenced. P.W.1 was examined in chief. The suit was posted for cross examination. At this stage, the petitioner has filed an application in I.A.NO.1 of



2009 to amend the written statement filed by the deceased first defendant. During the life time of the first defendant, he himself filed written statement and also a counter claim. The claim of the petitioner/the sixth defendant is that the first defendant during his life time had executed a Will. After the death of the first defendant, Will has come into force. As per the Will, he is a legal representative of the first defendant. Unless the written statement is amended, he is unable to proceed with the case.

7. In the considered opinion of this Court, the petitioner, who was impleaded as a legal representative of the deceased first defendant, can step into the shoes of the first defendant and he cannot have any independent stand. This Court does not find any perversity in the order passed by the trial court dismissing the petition filed to amend the written statement.

8. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To,

The Additional District Judge, Thoothukudi.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-10582[F] dated 09/03/2020)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-10644[F] dated 09/03/2020)

C.R.P(MD) No.148 of 2020
and C.M.P(MD) No.825 of 2020
06.03.2020

SM/ (06.05.2020) 3P 4C