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C.R.P.(PD).Nos.1305 & 1306 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.1305 & 1306 of 2016

and

C.M.P.Nos.7356 & 7357 of 2016

K.K.Subramani

.. Petitioner

[in C.R.P.(PD).No.1305 of

2016]

Thangavel

.. Petitioner

[in C.R.P.(PD).No.1306 of

2016]

Vs.

1.Murugesan

2.Duraisamy

.. Respondents
(in both cases)

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and final orders dated 08.02.2016 passed in I.A.Nos.644 & 645 of 2013 in O.S.No.184 of 2012 on the file of the District Munsif-Cum-Judicial Magistrate Court, Perundurai.

In both cases:

For Petitioner : Mr.A.Sundaravadhanan



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For R1 : No appearance

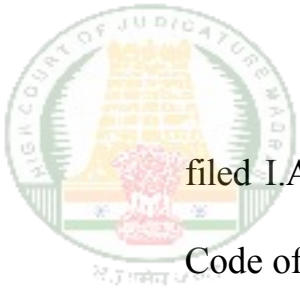
COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

These Civil Revision Petitions are filed against the fair and final orders dated 08.02.2016 passed in I.A.Nos.644 & 645 of 2013 in O.S.No.184 of 2012 on the file of the District Munsif-Cum-Judicial Magistrate Court, Perundurai.

2.The issues involved in both the Civil Revision Petitions are interlinked and hence, these Civil Revision Petitions are disposed of by this common order.

3.The petitioners are third parties in O.S.No.184 of 2012 filed by the 1st respondent against the 2nd respondent for declaration that he is the absolute owner of the property, by virtue of Will dated 13.11.2009 executed by late K.S.Shanmugasamy and for permanent injunction restraining the 2nd respondent from interfering with his peaceful possession and enjoyment of the suit property. In the said suit, the petitioner in C.R.P.(PD).No.1305 of 2016 filed I.A.No.644 of 2013 and the petitioner in C.R.P.(PD).No.1306 of 2016



filed I.A.No.645 of 2013 under Order I Rule 10 (2) and Section 151 of the Code of Civil Procedure to implead them as defendants 3 and 2 respectively in the above suit.

4. According to petitioner in both the cases, one Shanmugasamy was owner of suit property. The said Shanmugasamy borrowed money from the petitioners and executed promissory note. The said Shanmugasamy died on 31.05.2012 without marriage, leaving behind his sisters namely Muthulakshmi and Chellammal @ Jayamani and his deceased brother's wife Kamalaveni and his son Mahendran and Vasanth. Hence, the petitioner in C.R.P.(PD).No.1305 of 2016 filed suit in O.S.No.119 of 2012 and the petitioner in C.R.P.(PD).No.1306 of 2016 filed suit in O.S.No.120 of 2012 before the Sub Court, Perundurai for recovery of money based on promissory note executed by the said Shanmugasamy against his legal heirs. The petitioner in C.R.P.(PD).No.1305 of 2016 filed I.A.No.597 of 2012 and the petitioner in C.R.P.(PD).No.1306 of 2016 filed I.A.No.598 of 2012 in the above suits in O.S.Nos.119 & 120 of 2012 for attachment before judgment of suit property. In the above suits, the 1st respondent filed I.A.Nos.121 & 123 of 2013 respectively for impleading him as party defendant stating that the said Shanmugasamy has executed a Will in his favour with regard to suit property



and he filed the present suit for declaration and injunction based on the Will dated 13.11.2009. The petitioner in both the cases further stated that the said Shanmugasamy never executed any Will in favour of 1st respondent and the 2nd respondent is not at all legal heir of the said Shanmugasamy. To get collusive decree, the 1st respondent has filed the present suit against the 2nd respondent in order to defeat the claim of petitioners in the suit filed by them for recovery of money. The respondents have colluded together and filed the present suit and prayed for impleading the petitioner in both the cases as party defendant in the present suit.

5.The respondents 1 & 2 filed separate counter affidavits in both the I.As and opposed the said applications.

6.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the applications by two different orders dated 08.02.2016 in I.A.Nos.644 & 645 of 2013.

7.Against the said orders of dismissal dated 08.02.2016 made in I.A.Nos.644 & 645 of 2013, the petitioners have come out with the present Civil Revision Petitions.



8. Heard the learned counsel appearing for the petitioners and perused the entire materials on record. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

9. From the materials available on record, it is seen that the 1st respondent has filed suit in O.S.No.184 of 2012 against the 2nd respondent for declaration of title and injunction in respect of suit property. According to 1st respondent, he and his family members looked after one Shanmugasamy, the original owner of the suit property and to meet out his daily needs, medical expenses and other expenses, the said Shanmugasamy executed a Will dated 13.11.2009 bequeathing the property to the 1st respondent. Based on the said Will, the 1st respondent is claiming title in the present suit. As far as the petitioners are concerned, they are not claiming any title over the suit property. According to the petitioners, they are creditors of Shanmugasamy, who had borrowed money from them and executed promissory note. After the death of the said Shanmugasamy, the petitioner in C.R.P.(PD).No.1305 of 2016 filed suit in O.S.No.119 of 2012 and the petitioner in C.R.P.(PD).No.1306 of 2016 filed suit in O.S.No.120 of 2012 before the Sub



Court, Perundurai against two sisters namely Muthulakshmi and Chellammal @ Jayamani and said Shanmugasamy's deceased brother's wife Kamalaveni and his deceased brother's two sons Mahendran and Vasanth. The petitioner in C.R.P.(PD).No.1305 of 2016 filed I.A.No.597 of 2012 and the petitioner in C.R.P.(PD).No.1306 of 2016 filed I.A.No.598 of 2012 in the above suits in O.S.Nos.119 & 120 of 2012 respectively for attachment before judgment of suit property.

10.Further, it is the case of the petitioner in both the cases that 2nd respondent is not the legal heir of the said Shanmugasamy and the respondents colluded together and filed the present suit in O.S.No.184 of 2012. Only when a person necessary or proper party to decide the issue in the suit, the Court can, at any stage of the suit implead such a person. In so far as, the petitioners are not claiming any title over the suit property, they are neither necessary nor proper parties in the suit filed by the 1st respondent against the 2nd respondent for declaration of title and injunction restraining the 2nd respondent. The petitioner in both the cases have already availed the remedy available to them as creditor by filing suits in O.S.Nos.119 & 120 of 2012 for recovery of money based on promissory notes. The reason given by the petitioners that the 1st respondent has filed applications in I.A.Nos.121 &



123 of 2013 for impleading him as defendant in both the suits in O.S.Nos.119 & 120 of 2012 has necessitated them to file the present petitions to implead themselves in the suit filed by the 1st respondent in O.S.No.184 of 2012 is without merits. The learned Judge considering all the above materials, has rightly dismissed both the applications by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

11.For the above reasons, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed.

No costs.

09.12.2021

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Index : Yes / No
Internet : Yes / No

To

The learned District Munsif-Cum-Judicial Magistrate,
Perundurai.



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V.M.VELUMANI, J.
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