

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2057 of 2016
and C.M.P.No.10690 of 2016

1.Devarajalu Naidu (Died)
2.D.Ellammal
3.D.Babu
4.N.Bhagavathi
5.D.Gokulan

...Petitioners

Vs

1.K.Ramamurthy Naidu
2.R.Rajasekaran
3.V.Babu
4.G.Mohammed Azeez

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Docket order dated 04.04.2016 passed by the learned District Munsif, Tambaram, in Memo SR No.679 of 2016, dated 10.02.2016 filed by the 3rd and 4th defendants/3rd and 4th respondents herein in O.S.No.222 of 2011.

For Petitioners

: Mr.Ravikumar paul
Senior Counsel for
M/s Paul and Paul

For Respondents

: Mr.T.Thiyagarajan
for R3 & R4
For R1 & R2 - Notice served

ORDER

The Civil Revision Petition is directed, to set aside the Docket order dated 04.04.2016 passed by the learned District Munsif, Tambaram, in Memo SR No.679 of 2016, filed by the 3rd and 4th defendants/3rd and 4th respondents herein in O.S.No.222 of 2011.

2.The 1st petitioner is the plaintiff in O.S.No.222 of 2011, filed for declaration declaring that the sale deeds dated 14.11.1983 and 08.11.2011 in document Nos.9451 of 1983 and 5422 of 2011 on the file of the SRO, Tambaram, as null and void.

3.The case of the 1st petitioner is that while pending the suit the 3rd defendant executed the sale deed in respect of the suit property in favour of the 4th respondent herein and as such he has been impleaded as a 4th defendant in the suit vide order dated 29.10.2012 in I.A.No.752 of 2012.

After three years from the said suit, the 4th respondent namely, the 4th defendant in the suit, filed another suit in O.S.No.332 of 2014 for

declaration, declaring that the sale deed dated 16.10.1985 in document No.7777 of 1985 executed in favour of the 1st petitioner herein as null and void and permanent injunction in respect of the very same property. Both the suits are pending before the District Munsif, Tambaram. While being so, the 3rd and 4th respondent herein filed a memo and prayed for joint trial in both the suits, viz., O.S.Nos.222 of 2011 and 332 of 2014. On the memo, the Court below ordered enquiry and the 1st petitioner also filed objections in the said memo. The only objection raised by the 1st petitioner is that the 2nd suit was filed after a period of three years from the suit filed by the 1st petitioner. The 3rd and 4th respondents may not be successful in the 2nd suit i.e., O.S.No.332 of 2014 in conclusion of the trial and as such they sought for joint trial of both the suits. On receipt of the objection, the Court below ordered for joint trial of both the suits, viz., O.S.Nos.222 of 2011 and 332 of 2014. The Court below ought not to have ordered for joint trial, on the memo filed by the parties. The parties ought to have file a petition under Section 151 CPC and ask for joint trial. Without doing so, the Court below simply ordered for joint trial without any application. In support of his contention, a Judgment in the case of ***M.S.Anjaiah Vs. N.Rajaiah and***

another [CDJ 2003 APHC 057] was relied upon by the learned counsel for the petitioners and the relevant paragraphs are given below:-

"In view of the settled legal proposition, I am of the considered opinion that the power of the Court to order consolidation of suits clubbing of suits or joint trial of suits by exercising powers under Section 151 of the Code of Civil Procedure cannot be in any way doubted. But, however, when one of the parties are not agreeable for such a course, then the proper course will be to move a regular application explaining the facts and circumstances of the litigations which are sought to be consolidated or clubbed for being tried together. However, in the peculiar facts and circumstances of the present case and also taking into consideration that one suit already was heard and ripe for disposal and another suit is at the stage of recording evidence and also taking into consideration the undertaking of both the counsel before the trial it will be just and convenient to make the following order.

The learned Senior Civil Judge at Siddipet is hereby directed to try and dispose of O.S.No.4 of 2002 and O.S.No.5 of 2002 on the file of the said Court independently and dispose of simultaneously, since, it

will be just and equitable order in the facts and circumstances of the case."

4.In the above cited Judgment, the Hon'ble High Court of Andhra Pradesh has held that when one of the parties are not agreeable for joint trial, the parties should move a regular application for joint trial. In the case on hand, though the 1st petitioner was not agreed for joint trial, he was given an opportunity to file his objections in the memo filed by the respondents 3 and 4. Thereafter, the 1st petitioner also filed his objections in which the 1st petitioner failed to raise any objection with regard to maintainability of the memo.

5.Though the petitioner has got opportunity, to make his objections in the memo, the concerned parties have to file necessary objection for consolidated trial. That apart, on receipt of the objections by the petitioner, the Court below ordered for joint trial. Therefore, the Judgment cited by the learned counsel for the petitioners is not helpful for his case. Further, this Court finds no irregularity or infirmity in the docket order passed by the Court below. However, the trial Court is directed to

dispose of both the suits, i.e., O.S.Nos.222 of 2011 and 332 of 2014 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

18.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The District Munsif, Tambaram.

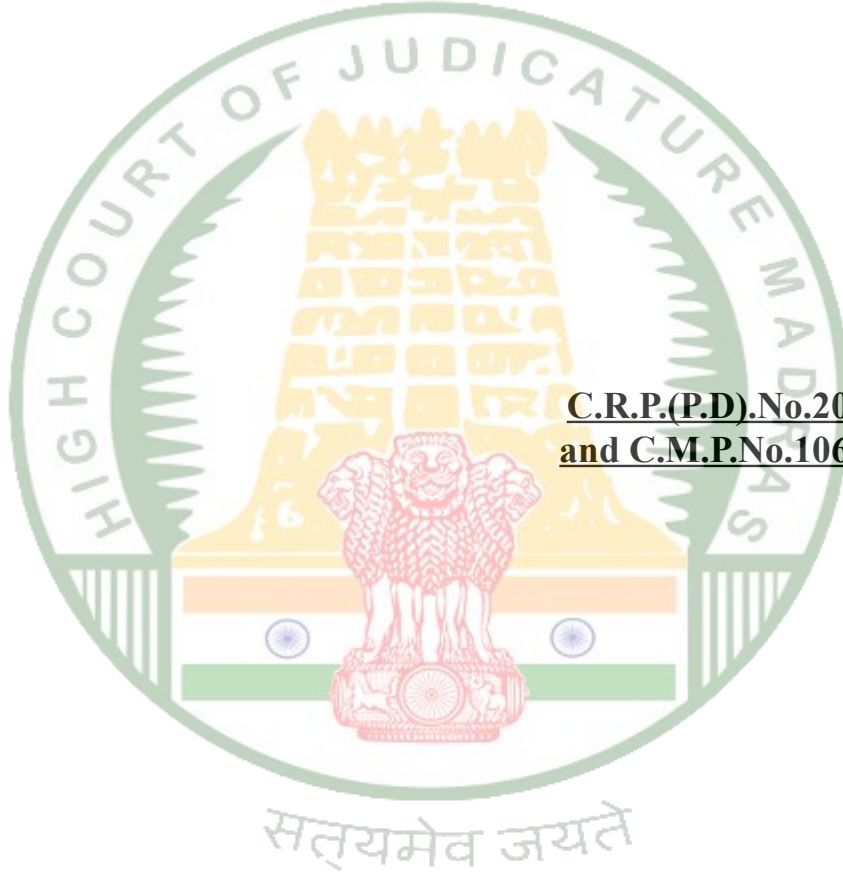


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