

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(NPD) No.2370 of 2018
and
CMP No.14691 of 2018

Meena

Sangamirtham (Died)

... Petitioner

Vs

1. B.Ashok Kumar
2. B.Kamal
3. A.Suseela Kanwar
4. K.Hemalatha
5. S.Ramasamy & Co.,
Rep by its Partner **S.Balasubramaniam**
6. S.Balasubramaniam
7. S.Sunderesan
8. S.Chelladurai
9. Anandavalli

10. The Chief Manager,
Indian Bank,
Assets Recovery Management Branch,
No.5, Ethiraj Salai,
Egmore, Chennai – 600 008.

11. The Senior Branch Manager,
Indian Bank, Vadapalani Branch,
By its Senior Manager,
Inner Ring Road, Chennai.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.07.2018 made in CMP No.943 of 2016 in A.S.SR.No.22515 of 2016 in O.S.No.10802 of 2009 on the file of the Principal Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Rajan
For R1 to R4 : M/s.Rank Associates
For R5 to R9 : No Appearance
For R10 : Mr.Jayesh B.Dolia
for M/s.Iyer and Dolia
For R11 : Mr.B.Murugavel

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 06.07.2018 made in CMP No.943 of 2016 in A.S.SR.No.22515 of 2016 in O.S.No.10802 of 2009 on the file of the Principal Judge, City Civil Court, Chennai, thereby allowing the petition to grant leave to file an appeal suit.

सत्यमेव जयते

2. The petitioner is the plaintiff and the respondents 1 to 4 are the proposed appellants. The petitioner filed a suit for declaration, declaring that the General Release Deed dated 29.01.1983 as not enforceable and null and void. He also prayed for permanent injunction and declaration declaring that the mortgage created by the second

defendant with the seventh defendant in respect of the suit property as null and void. While pending suit, the respondents 1 to 4 filed a petition to implead themselves as a party in the suit in I.A.No.18027 of 2010. Though, it was allowed, the plaintiff failed to carry out the amendment and the respondents 1 to 4 were not put on notice, thereafter, the suit was decreed. Therefore, the respondents 1 to 4 herein sought for leave to file an appeal challenging the Judgment and Decree passed in the suit filed by the petitioner herein and the same was allowed. Aggrieved by the same, the petitioner had preferred the present Civil Revision Petition.

3. The learned counsel for the petitioner would submit that though the respondents 1 to 4 filed a petition in I.A.No.18027 of 2010, after allowing the same, they did not take any steps to carry out the amendment, following to grant of permission for amendment, in the light of Order 1 Rule 10(4)(5) and Order 6 Rule 18 of CPC, on failure of the applicant to carry out the amendment, it will not give any right whatsoever, to the persons, who are permitted to be impleaded, to ask for impleadment, in the appellate stage. In support of his contention, he relied upon the following Judgments :

2009 (5) CTC 259 (*Rajapalayam Town Amman Pottal Middle North Street Pallar Common Fund v. Devandra Kula Velalar Community*)

1999 (3) CTC 335 (*S.Ramaswamy and four others vs. The State of Tamil Nadu rep. by its Collector, Kanyakumari District at Nagercoil and another*)

2008 (1) CTC 343 (*Sunil Gupta Vs. Kiran Girhotra and others*)

AIR 2003 Madras 416 (*Southern Ancillaries Pvt. Ltd Vs. Southern Alloy Foundaries Pvt. Ltd.,*)

4. In all the above judgments, this Court elucidated the legal position that it is well settled that the plaintiff being a dominus litis is entitled to choose the person against whom he is seeking the relief. If at all petitioner is having any grievance against the plaintiffs, it is open to the petitioner to file a separate suit and contest the same against the plaintiffs.

5. Per contra, the learned counsel for the respondents 1 to 4 submitted that it is true that they filed a petition seeking impleadment in the suit in I.A.No.18027 of 2010 and the same was allowed. Even then,

the petitioner herein deliberately omitted to put the respondents 1 to 4 on notice and obtained a decree in their absence. He further submitted that admittedly the respondents have purchased the suit property from the seventh defendant in the original suit by Court Auction. Therefore, they were very much interested in respect of the suit property and they have grievance over the Judgment and Decree in O.S.No.10802 of 2009. Therefore, the Court below rightly granted leave to the respondents 1 to 4 herein, to prefer the appeal. He further submitted that in fact, the respondents 1 to 4 obtained the certified copy of the plaint and the same was duly carried out and even then the petitioner did not put the respondents 1 to 4 on notice and obtained the decree.

6. In fact, the petitioner also filed an additional proof affidavit stating that the petitioner have mistakenly not mentioned the names of the auction purchasers i.e., 8 to 11 who were impleaded in the suit. Hence she filed an additional proof affidavit to that effect that the cause title shows the auction purchasers as 8 to 11 defendants. Therefore, the Court below rightly allowed the petition, thereby to grant leave to file an appeal suit.

7. Heard, the learned counsel for the petitioner and the learned counsel for the respondents 1 to 4, 10 & 11. None appeared on behalf of respondents 5 to 9.

8. The petitioner filed a suit for declaration. While pending suit, the respondents 1 to 4 herein filed a petition to implead themselves as a party to the suit in I.A.No.18027 of 2010 and the same was allowed. Though, the amendment was carried out in the plaint and in fact, the petitioner also filed an additional proof affidavit to show that the respondents 1 to 4 as defendants 8 to 11 in the main suit, the respondents 1 to 4 were not put on notice. Therefore, the Trial Court decreed the suit in their absence.

9. That apart, admittedly while pending suit, the respondents 1 to 4 purchased the suit property by way of auction. Since, the borrowers viz., the other defendants in the suit, were facing SARFEASI proceedings by the seventh defendant in the suit. The respondents 1 to 4 had purchased the suit property in the Court Auction and therefore, the Court below rightly allowed the petition, thereby to grant leave to them to file an appeal suit.

10. In view of the above, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand. Hence, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.07.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

The Principal Judge,
City Civil Court,
Chennai.

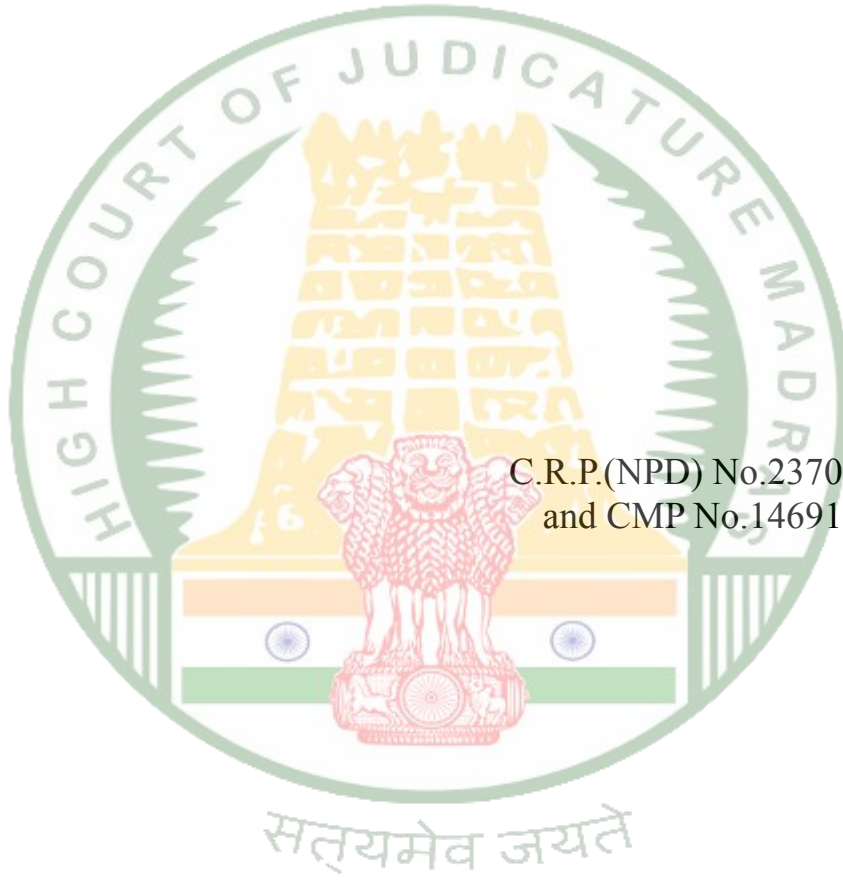


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G.K.ILANTHIRAIYAN,J.

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