

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.04.2021**

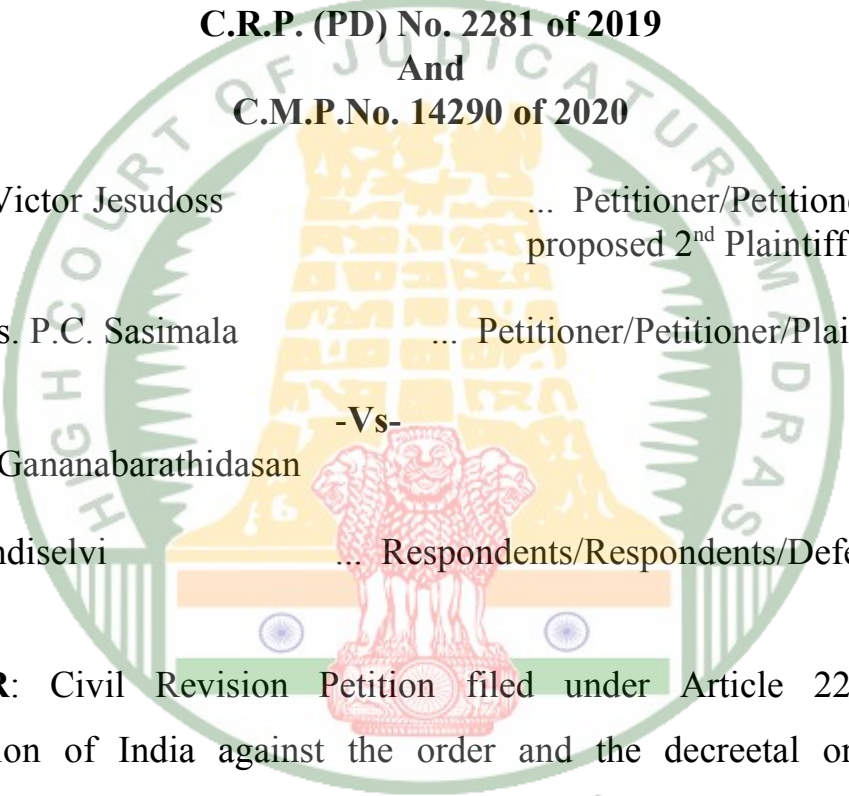
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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2281 of 2019

And

C.M.P.No. 14290 of 2020

- 
1. G.Victor Jesudoss ... Petitioner/Petitioner/
proposed 2nd Plaintiff
2. Mrs. P.C. Sasimala ... Petitioner/Petitioner/Plaintiff
- Vs-
1. G. Gananabarathidasan
2. Pandiselvi ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and the decretal order dated 11.02.2020 made in I.A.No. 1 of 2019 in O.S.No. 125 of 2016 on the file of the learned Principal Subordinate Judge at Chengalpattu.

For Petitioners : Mr. V.T. Narendiran

For Respondents : Mr. M.S.Rishi
for M/s. M.Ravichandiran

ORDER

The present Civil Revision Petition is directed against the order dated 11.02.2020 in I.A.No. 1 of 2019 in O.S.No. 125 of 2016, which suit is pending before the Principal Sub Court at Chengalpattu.

2. The suit had been filed by Mrs. P.C. Sasimala, wife of Mr.G.Victor Jesudoss against two defendants (1) Mr. G.Gnanabarathidasan and (2) Mrs. Pandiselvi. The relief sought in the suit was for a declaration that the Power of Attorney dated 25.10.1996 executed by the husband of the plaintiff in favour of the first defendant is null and void and for a declaration that an agreement of sale deed dated 25.10.1996 also executed by the first defendant as power agent of the husband of the plaintiff in favour of the second defendant is null and void and for a declaration that a sale deed dated 22.10.1999 executed by the first defendant in favour of the second defendant is null and void and for permanent injunction restraining the second defendant from dealing with the said property and for costs.

3. Trial has not yet commenced. It may therefore not be proper on my part to go deeply into the merits of the claims raised in the plaint.

4. At any rate, the Interlocutory Application which is now the bone of contention in I.A.No. 1 of 2019, had been filed by the plaintiff, seeking to implead the husband as co-plaintiff along with the plaintiff.

5. In the affidavit filed in support of the said application, it had been stated that though the plaintiff is the absolute owner of the suit property in view of the registered settlement deed executed by the present revision petitioner, the entire facts of the case revolves around his acts of omission and commission and that the suit cannot be adjudicated in his absence. It is also stated that he is a proper and necessary party to the suit.

6. A counter had been filed questioning his locus and stating that there is no necessity for the present petitioner to be impleaded as co-plaintiff. It had been stated that the said application itself had been filed in connivance with his wife and the plaintiff had successfully dragged on the case for the past three years without getting ready for enquiry or gracing the witness box.

7. This Application came up for consideration before the learned Principal Sub Judge at Chengalpattu on 11.02.2020 and the learned Judge, had stated that the petitioner had come forward with the petition after a long period and does not have a right to be added as a plaintiff. It had been contended that the arguments put forth are not legally acceptable and therefore, there was no necessity to implead him as co-plaintiff and the petition was dismissed. This order is now under challenge in the present Civil Revision Petition.

8. Section 120 of the Indian Evidence Act permits that both husband and wife can be competent witness for each other. If at all the present petitioner wants to support the case of the plaintiff by tendering evidence, there can be no bar or there can be no order preventing him from tendering evidence. As a matter of fact, he can tender evidence on behalf of the plaintiff, with respect to the facts are known to him.

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9. I wonder at the advantage that would accrue to the present petitioner by categorising him as a second plaintiff in the suit. The learned counsel for the petitioner however insisted that it would only be appropriate

that he is also added as a plaintiff. The learned counsel for the respondents contested that statement.

10. The suit has been pending for the past five years. There has been no effective progress in the suit. If at all the petitioner wants to lead evidence on behalf of the plaintiff which may be one of the reasons why the plaintiff had not grazed the witness box and tendered evidence because naturally she would be subjected to cross examination, he would have every right to tender evidence taking advantage of Section 120 of the Indian Evidence Act. The facts stated in the plaint primarily revolves around documents. It is claimed that the Power of Attorney executed by the present petitioner is stated to be in favour of the second defendant must be set aside. Further subsequent transactions entered into by the first defendant pursuant to such Power of Attorney are also questioned in the plaint. Therefore, even if the petitioner is impleaded as a plaintiff, he can never better the averments already made in the plaint. There is also a possibility that by impleading himself, the scope of the suit may also be sought to be widened by taking undue advantage of his newly gained status.

11. Let parties go to trial on the pleadings as they rest and in the frame work of the plaint as it is now today. If at all the petitioner wants to lead evidence, he is always at liberty to lead evidence either at the call of the plaintiff or taking advantage of his unique position as spouse of the plaintiff.

12. Having given my considered thought to the entire issue I do not see any reason or necessity to implead him as a party to the suit, I further hold that the suit may be proceeded with as it now stands. The defendants have entered appearance and they have filed their written statement. The pleadings need not be enlarged.

13. The suit is pending for the past five years and therefore, it would only be appropriate that a direction is given to the learned Sub Judge, to restrict the adjournment dates to not more than four working days in between any two adjournment dates and thereafter frame issues and thereafter invite the parties to trial to lead evidence. While recording evidence, the learned Sub Judge may record the evidence as far as practical on a daytoday basis. I am conscious that may not be wholly practical.

However, even if adjournments are sought during the course of trial, the learned Sub Judge may grant only four working days in between any two adjournment dates and thereafter insist that the parties should come forward to graze witness box. Moreover for the same reason, not more than three adjournments should be granted. By following this procedure, the learned Sub Judge would be able to control the flow of the trial and bring the suit to an end at the earliest. The parties are directed to co-operate. If they do not, the learned Sub Judge is at liberty to fix an entirely different time schedule for disposal of the case.

14. With these observations, this Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

vsg

09.04.2021

Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

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C.V.KARTHIKEYAN, J.

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