

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.06.2021

PRONOUNCED ON: 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 2238 of 2020

And

C.M.P.No. 14090 of 2020

A.K.B.Pitchalu (Died)

A.K.B. Sugendran (Died)

1. A.K.B. Rajendran

2. P.Kamala

... Respondents/Plaintiffs/Petitioners

3 and 4

3 and 4

1 and 2

Legal heirs of A.K.B. Sugedran

3. Karthik

4. Shanmugapriya

... Third parties/Third parties/Petitioners 3 & 4

-Vs-

1. Gopalraj

2. Kalavathi

... Petitioners/Proposed defendants/Respondents 1
& 2

3. M.Kannambal
4. A.K.B.Ravichandran
5. Mansur Ali Saheb
6. Ramesh
7. Suresh
8. Basheera Bibi
9. Mohammad Rafi
10. Saleem Basha
11. Mansoor Basha
12. Regina Begum

... Respondents 5,6,8 to 15/Defendants 1 &
2, 4 to 6, 9 to 13/Respondents 3 to 12

Legal heirs of A.K.B. Pichalu

13. Rajeshwari
14. Vanitha
15. Rekha

16. Bharani

... Third parties/Third parties/Respondents
13 to 16

Respondents 3 to 16 are given up as unnecessary parties.

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and the decretal orders dated 2.07.2020 in I.A.No. 2191 of 2019 in O.S.No. 111 of 2017 passed by the III Additional District/Sessions Court, Cuddalore at Vridhachalam.

For Petitioners : Mrs. Hema Sampath
Senior Counsel

For RR 1 & 2 : Mr. T.R.Rajagopalan
Senior Counsel

ORDER

This Civil Revision Petition has been filed questioning the order dated 02.07.2020 in I.A.No. 2191 of 2019 in O.S.No. 111 of 2017 on the file of the III Additional District /Sessions Court, Cuddalore at Vridhachalam.

2. The plaintiffs in O.S.No. 111 of 2017 are the revision petitioners herein. I.A.No. 2191 of 2019 had been filed by the first and second respondents herein seeking to implead themselves as defendants to the suit. That application came to be allowed by order dated 02.07.2020. Questioning that order, the present Revision Petition has been filed.

3. O.S.No. 111 of 2017 had been filed by the plaintiffs seeking a preliminary decree for partition and separate possession of undivided 4/5th share in the suit property and also for a share of future income payable by the defendants and for costs.

4. The plaintiffs filed I.A.No. 385 of 2019 seeking to implead Gopalraj as 7th defendant and Kalavathi as 8th defendant. They claimed that after filing of the suit, the 3rd defendant K.J. Mohammed Zakhariah had executed a power of attorney in favour of the 7th defendant to deal with the suit property and the 7th defendant had executed a sale deed in favour of his wife, the 8th defendant. It had been stated that therefore, they are necessary parties.

5. It is seen that the said I.A.No. 385 of 2019 had also been allowed and amendment application was filed and amendment was also carried out in the plaint. The impleaded 7th defendant also filed written statement. Issues had also been framed. The suit was posted for trial. At that stage, the learned counsel for the plaintiffs filed a memo stating that the

sale deed had not been registered and was kept pending by the Sub Registrar, Tittagudi and therefore, the plaintiffs are giving up the 7th and 8th defendants. Accordingly, they were struck off as parties to the plaint. Subsequently, on appeal, the District Registrar, Vridhachalam, had directed registration of the sale deed which was also registered as a document. Therefore, the 7th and 8th defendants had filed an application in I.A.No. 2191 of 2019 to implead themselves as defendants in the suit. That application came to be allowed by the learned Judge.

6. In the course of the order, the learned Judge observed that the plaintiffs had themselves got the said defendants on record and the plaint had also been amended and that the sale deed had been subsequently registered and therefore, they are necessary parties.

7. Mrs. Hema Sampath, learned Senior Counsel for the petitioners stated that if the said Gopalraj and Kalavathi had any grievance with respect to the claim of the plaintiffs then they should file a separate suit and cannot claim to be impleaded as defendants in the suit filed by the plaintiffs. The learned Senior Counsel in this regard relied on *AIR 1962 Madras 346*

[M.Abdul Razack Vs. S.Mohammad Shah]. A Single Judge of this Court had, while examining Order 1 Rule 10 of the Code of Civil Procedure stated that a party can be impleaded only when he is a necessary or proper party. It had been observed as follows:-

“The power to implead a party to a suit is governed by O.1 Rule 10 of the CPC. A party can be impleaded only when he is a necessary or a proper party. It cannot be stated that a person claiming an adverse title to the estate of the deceased would be either a necessary or a proper party in a suit for administration of the estate.”

8. The learned Senior Counsel therefore stated that the order under revision should be interfered with.

9. This contention of the learned Senior Counsel was disputed by Mr.T.R. Rajagopalan, learned Senior Counsel, who appeared for the first and second respondents. After setting out the facts which had also been stated above, the learned Senior Counsel relied on **(2005) 11 SCC 403 [Amit Kumar Shaw and another Vs. Farida Khatoon and another]**, wherein the

Hon'ble Supreme Court while examining the scope of Order 1 Rule 10 CPC, had observed as follows:-

“The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases:

- (1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or*
- (2) When, without his presence, the questions in the suit cannot be completely decided.”*

10. In the instant case, the plaintiffs had themselves thought it necessary to implead the first and second respondents herein as the 7th and 8th defendants in the suit. That application was also allowed. Amendment Petition was also filed. Amendment was also carried out. The first and second respondents were impleaded as 7th and 8th defendants. They also

filed written statement. Issues were also framed. At that time, the counsel for the plaintiffs filed a memo giving up the 7th and 8th defendants.

11. I am not entering into any discussion whether defendants can be struck off on a memo. However, that procedure was adopted owing to the fact that the sale deed executed by the 7th defendant herein as power agent of the 3rd defendant in favour of the 8th defendant had been kept pending by the Sub Registrar, Tittagudi. Subsequently, on directions of the District Registrar, Vridhachalam, the sale deed was registered as a document.

12. The first and second respondents herein therefore filed I.A.No. 2191 of 2019 seeking to implead themselves as party/defendants.

13. The learned Judge in the course of the order had clearly observed that the petitioners herein, had at one point of time, felt the present first and second respondents were necessary parties to the suit and had therefore impleaded them as defendants. The presence of the first and second defendants would be necessary to adjudicate the issues in the suit.

Moreover, as purchasers of the property, the issues in the suit cannot be answered without their presence and more importantly their rights would certainly be affected by any Judgment passed in the suit.

14. I therefore hold that the order under Revision need not be interfered with and I hold that this Civil Revision Petition should be dismissed and it is accordingly dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

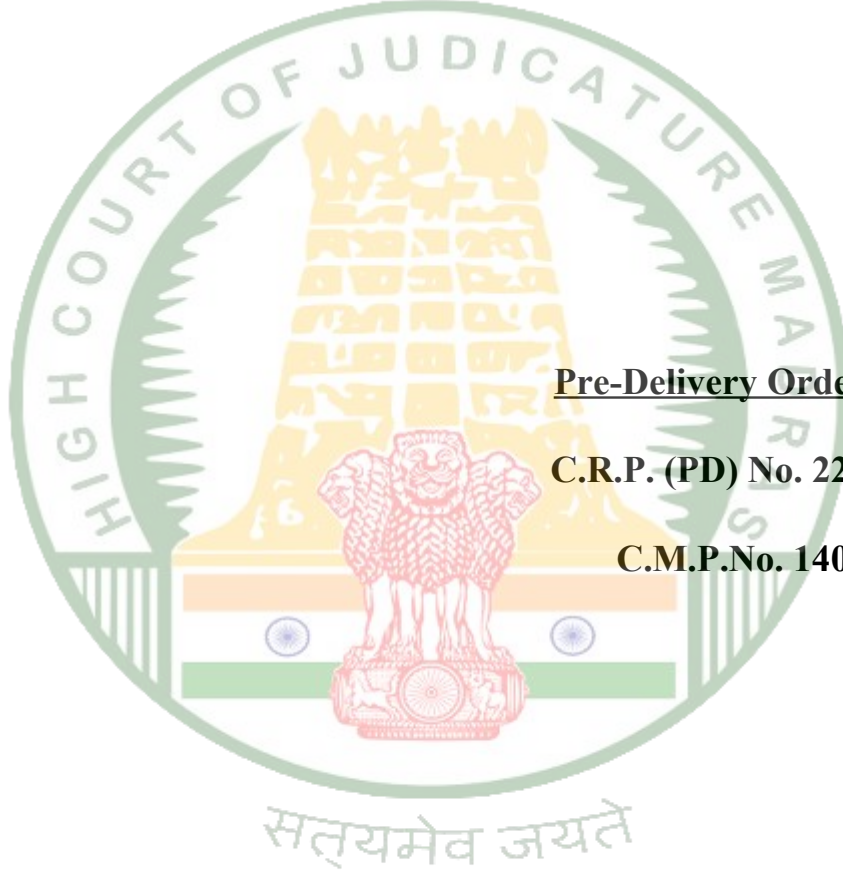
To

III Additional District/Sessions Court,
Cuddalore at Vridhachalam.

29.06.2021
(2/2)

C.V.KARTHIKEYAN, J.

vsg



Pre-Delivery Order made in

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And
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**29.06.2021
(2/2)**