

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2021

CORAM

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

CRP.PD.No.3143 of 2017

and

CMP.No.14757 of 2017

1. Jeyavel

2. Premakumari

... Petitioners

Vs.

Rangesan

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.04.2017 and made in I.A.No.787/2016 in O.S.No.134/2012 on the file of the Sub-Judge, Dharmapuri within a fixed time frame.

For Petitioners : Mr.C.Umashankar

For Respondent : Mr.M.Jyothikumar

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.787 of 2016 in O.S.No.134 of 2012 dated 25.04.2017 on the file of the learned Sub-Judge, Dharmapuri, thereby, allowing the petition for amendment.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed a suit for partition in respect of the suit properties comprised in S.Nos.473/2 and 474 situated at Virupachipuram Village, Dharmapuri District. Thereafter, the petitioners have filed a written statement. While pending the suit, the respondent filed a petition for amendment to include the prayer for declaration to declare the sale deed dated 16.08.2007 vide document No1548/2007 as null and void.

3. On a perusal of the written statement filed by the petitioners, they stated that the property comprised in S.No.474 belonged to their maternal aunt and she executed Power of Attorney in favour of the first petitioner herein dated 30.04.2007 vide document No.190/2007. In pursuance to the same, the first petitioner executed sale deed in favour of the second petitioner herein and as such, the property cannot be partitioned and it is individual property. However, the petitioners failed to mention about the date of the sale deed and also document Number. After coming to know about the date of the sale deed and also document Number, the respondent has come forward with the petition to include the prayer for declaration to declare the sale deed as null and void.

4. The learned counsel for the petitioners submitted that the petition for amendment was filed after a period of four years from the date of the written statement. In the written statement itself, they categorically stated that the said maternal aunt already executed Power of Attorney in respect of the property comprised in S.No.474 in favour of the first petitioner herein and in turn he executed the sale deed in favour of the second petitioner herein. Therefore, the said property cannot be partitioned. He further submitted that in respect of the property comprised in S.No.473/2 already a partition suit was filed by them in O.S.No.154 of 2011 as against the respondent herein and it is pending. Therefore, when the suit for partition is already pending, the present suit itself is not maintainable. He further submitted that the Court below passed a non speaking order without stating any reason for allowing the amendment that too after period of four years from the date of the written statement.

5. Per contra, the learned counsel for the respondent submitted that the present suit is filed for partition in respect of the suit properties comprised in S.Nos.473/2 and 474 situated at Virupachipuram Village, Dharmapuri District. Whereas, the respondent filed a suit for partition in respect of the property comprised in S.No.473/2 alone. Further, though the

petitioners stated in the written statement as if the property comprised in S.No.474 belonged to her maternal aunt and she executed Power of Attorney in favour of the first petitioner herein and in turn, he executed sale deed in favour of the second petitioner, they did not mention about the date of the sale and also document Number. Now only the respondent came to knowledge about the sale deed and filed a petition to amend the prayer, thereby including the prayer for declaration in respect of the said sale deed as null and void. He further submitted that the said maternal aunt viz., Periyapappa had no issues. Therefore, the said property also has to be subjected for partition.

6. Heard the learned counsel for the petitioners as well as the learned counsel for the respondent.

7. The respondent filed the said suit for partition in respect of the property comprised in S.Nos.473/2 and 474 situated at Virupachipuram Village, Dharmapuri District as against the petitioners herein. On a perusal of the written statement filed by the petitioners herein, though they stated that the property comprised in S.No.474 was partitioned by their mother and her sister and it was allotted to maternal aunt and subsequently, she

executed Power of Attorney in favour of the first petitioner herein, who executed the sale deed in favour of the second petitioner for valid sale consideration, they did not mention about the date of sale deed and also document Number. However, in a suit for partition whether the property comprised in S.No.474 is subjected for partition or not has to be decided in the suit by letting evidence. Therefore, it would not cause any prejudice to the petitioners and it would not change the nature of the suit. As such, this Court finds no infirmity or illegality in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition is dismissed. However, the Court below is directed to conduct joint trial in O.S.No.154 of 2011 and O.S.No.134 of 2012 and dispose of the suits within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

10.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The Sub-Judge, Dharmapuri.

G.K.ILANTHIRAIYAN,J.

Kv



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