

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.6.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD) No.4276 of 2017

and

C.M.P.No.20054 of 2017

1. Revathi
2. Gomathi
3. Murugapandian
4. Elamathi

Petitioners

vs.

1. Srinivasan
2. Jayaraman

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 24.2.2017 passed in I.A.No.1237 of 2016 in O.S.No.33 of 2010 on the file of the District Munsif Court, Jayankondam.

For Petitioner : Ms.M.Senthil Vadivu

For R1 : Mr.S.Nagarajan

For R2 : No appearance.

ORDER

The Civil Revision Petition has been filed seeking to set aside the order in I.A.No.1237 of 2016 in O.S.No.33 of 2010 dated 24.2.2017 passed by the learned District Munsif, Jayankondam.

2. The petitioners are the plaintiffs in O.S.No.33 of 2010. The said suit was filed to declare the sale deed executed between the first and second defendant dated 28.5.1998 as null and void and consequently directing the respondents not to interfere with the possession of the plaintiffs. The suit was filed on 22.1.2010. The first defendant had filed written statement on 13.9.2010. In the written statement, the first defendant had stated that by a sale deed dated 7.10.2009, he had sold item Nos.2 and 3 of the suit schedule properties to one Ka.So.Ganesan Memorial Trust, Jayankondam. Coming to know that subsequent purchaser Ka.So.Ganesan Memorial Trust is a necessary party, the plaintiffs have filed a petition in I.A.No.1237 of 2016 seeking to implead the subsequent purchaser Ka.So.Ganesan as a necessary party.

3. The first defendant had filed a counter affidavit stating that the written statement was filed on 13.9.2010 and that the case was listed for trial and that the plaintiff/PW1 had been examined on 24.8.2016 and only in order to protract the case, the petition had been filed after six years of filing the written statement when the case was at the stage of part-heard and the first defendant further stated that no reason had been stated for the delay in filing the petition at a later

point of time after six years and the petitioners/plaintiffs had not shown any diligence in filing the case. It had been further stated that when the properties had been sold in the year 2009, the suit for declaration had to be filed within three years from the date of sale and that there was also delay in impleading the proposed party.

4. The proposed party had also filed a counter affidavit wherein it had been stated that the property had been purchased by the first defendant out of his own income and that the proposed party had purchased the same from the first defendant on 7.10.2009 after paying the due sale consideration and that they have also taken possession and that only in order to defeat the rights of the proposed party, the present petition had been filed.

5. The Trial Court, finding that the suit had been filed on 22.1.2010 and that the written statement had been filed on 13.9.2010 and that the petition to implead the proposed party had been filed after six years when the trial had commenced and further finding that the suit for declaration that the sale deed dated 7.10.2009 as null and void had to be filed before 7.10.2012, had dismissed the suit, as against which the present revision had been filed.

6. The learned counsel for the petitioner would submit that as

per the Order 1 Rule 10 CPC, the court may, at any stage of the proceedings, either upon or without the application of either party, join any party as party as plaintiff or defendant, whose presence before the court may be necessary in or to enable the court to effectually and completely adjudicate upon all the questions involved in the suit and in this case, the subsequent purchaser is a necessary party whereas the Trial Court, without taking into consideration such necessity, had dismissed the petition thereby putting the petitioners/plaintiffs to great hardship.

7. Mr.S.Nagarajan, learned counsel for the first respondent would submit that the proposed party had purchased the property by a sale deed dated 7.10.2009 and that the suit had been filed subsequently on 22.1.2010. Even at that point of time, the petitioners/plaintiffs were aware of the same. Further, the property in question is a self-acquired property of the first defendant and that there was a partition between defendants wherein items 2 and 3 of the suit schedule properties were allotted to the first defendant, who had sold the same to the proposed party after obtaining due sale consideration. The learned counsel further submitted that in this case, the first defendant had filed the written statement as early on

13.9.2010. Even at that time, the petitioners/plaintiffs were aware of the sale of the property to the proposed party. If the petitioners had been diligent enough, they should have filed the petition to implead the proposed party at the earliest point of time, whereas they have delayed the process and only after the trial had commenced and after examination of PW1, the present petition has been filed to defeat the rights of the proposed party. He would further submit that the proposed party is a Trust and it has purchased the property after paying due consideration. He would further submit that the Trial Court rightly finding that the petition had been filed only to delay the trial and also finding that no relief had been sought for against the proposed party had rightly dismissed the petition. He would further state that there is no infirmity in the order passed by the Trial Court and it needs no interference by way of this revision.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. In this case, the petitioners filed the suit on 22.1.2010. Even prior to filing of the suit, the properties in items 2 and 3 of the suit schedule were sold to the proposed party. Further, the first respondent, who has sold the property to the proposed party, has filed

written statement on 13.9.2010 wherein, he had contended about the sale of properties to the proposed party. Despite that, the petition to implead the proposed party has been filed by the petitioners/plaintiffs only after six long years i.e., on 14.2.2017. The huge delay on the part of the petitioners/plaintiffs in taking steps to implead the necessary party shows the intention on the part of the petitioners/plaintiffs in protracting the proceedings in one way or other. Therefore, The trial Court, finding that the petition to implead has been filed only to delay the proceedings and no relief has been sought for against the proposed party, rightly dismissed the petition.

10. I do not find any infirmity in the order passed by the court below. The civil revision petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

16.6.2021.

Index: Yes/No.
Internet: Yes/No.
ssk.

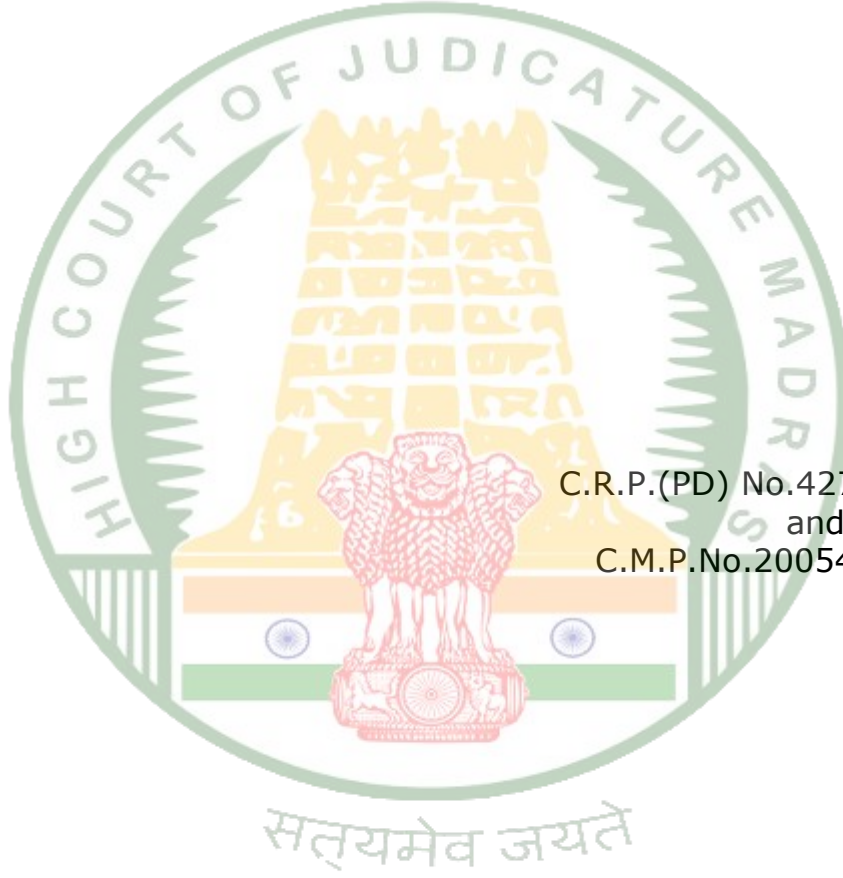
To

The District Munsif,
Jayankondam.

WEB COPY

A.D.JAGADISH CHANDIRA

Ssk.



C.R.P.(PD) No.4276 of 2017
and
C.M.P.No.20054 of 2017

WEB COPY

16.6.2021.