



CRP (MBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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CRP(MD)No.249 of 2021 & CMP(MD)No.1486 of 2021,
CMP(MD)Nos.1415 and 1417 of 2021 in CRP.SR(MD)Nos.7070 and 7069 of
2021 and CMA(MD)No.143 of 2021 & CMP(MD)No.1228 of 2021

CRP(MD)No.249 of 2021:-

Balaammal

... Petitioner

vs.

1)Shanthi

2)Raja Pandi

... Respondents

Petition filed under Section 115 of the Civil Procedure Code, against the order dated 06.01.2021 passed in E.A.No.61 of 2019 in E.P.No.70 of 2019 in O.S.No.8 of 2011 on the file of Additional District Court, Dindigul.

For Petitioner : Mr.D.Nallathambi

For Respondents : Mr.C.K.Vishnupriya

CMP(MD)Nos.1415 & 1417 of 2021 in CRP.SR(MD)No.7070&7069 of 2021:-

Balaammal

... Petitioners in both CMPs

vs.

1)Shanthi

2)Raja Pandi

... Respondents in both CMPs

Common Prayer:-

Petitions filed under Section 151 of the Civil Procedure Code, to pass an order to grant leave to file Civil Revision Petition in CRP(MD)SR.Nos.7070 and 7069 of 2021 before this Hon'ble Court as against the common order dated 06.01.2021 passed in E.A.Nos.36 and 37 of 2020 in E.P.No.70 of 2019 in O.S.No.8 of 2011 before the Additional District Court, Dindigul.

For Petitioner : Mr.D.Nallathambi

For Respondents : Mr.C.K.Vishnupriya

CMA(MD)No.143 of 2021:-

1)S.Kesavamoorthy

2)K.Ravi Kannan

3)G.Dass Prakash



4)V.Palanichamy
5)R.Kannan
6)S.Shanmugam
7)K.Giri
8)R.Kumar
9)A.Chinnaammal

... Appellants

vs.

1)Shanthi
2)Raja Pandi

... Respondents

For Appellants : Mr.R.Murugan
For Respondents : Mr.C.K.Vishnupriya

Appeal filed under Order 43 Rules 1 and 2 of the Civil Procedure Code, against the fair and executable order dated 06.01.2021 passed in E.A.No.38 of 2020 in E.P.No.70 of 2019 in O.S.No.8 of 2011 on the file of the Additional District Court, Dindigul.

COMMON ORDER

CRP(MD)No.249 of 2021 has been filed by a third party to the suit in O.S.No.8/2011 on the file of Additional District Court at Dindigul. The parties in the revision petition are described as per the nomenclature allotted in the suit.

2.The 1st respondent in the revision petition is the plaintiff/decreed holder. The 2nd respondent in the revision petition is the 1st defendant in the suit and one Perumal Naidu who died during the pendency of the proceedings is the 2nd defendant. The suit was filed for specific performance and the suit was decreed on 04.06.2012 as against the 1st defendant.

3.The plaintiff filed E.P.No.2/2014 seeking execution of sale deed against Rajapandi(D1). As he remained exparte, the Court itself executed sale deed on 01.07.2016. Thereafter, the decree holder filed E.P.No.70/2019 seeking delivery of possession. Pending E.P., one Balammal wife of Perumal Naidu filed E.A.No.61/2019 claiming title to the property based upon the will dated 25.09.1995. After enquiry, E.A.No.61/2019 was dismissed on 06.01.2021 on merits.

4.Pending claim petition, the decree holder filed application for removing the constructions to break open the property and police aid. The claim of the objector was that he is the tenant of Perumal Naidu and later he became the tenant of Balammal and that he should not be dispossessed. The objections were overruled. Hence the objector filed CMA(MD)No.143/2021.



5.Perumal Naidu died on 02.11.2010. Before death, apart from executing the will dated 25.09.1995, he also executed a sale deed in favour of Rajapandi(R2 herein). Balammal was also a witness to the sale deed. Thereafter, Rajapandi who had insured the suit property and also had obtained loan from South Indian Bank, was unable to repay the loan. He requested the assistance of the plaintiff Shanthi and entered into a sale agreement on 21.01.2008. Since the 1st defendant did not honour the agreement, suit was filed by the plaintiff in O.S.No.8/2011. Application was filed to bring the legal heirs of Perumal Naidu namely, Balammal. The trial Court held that as the sale agreement is only between Rajapandi/1st defendant and Shanthi/plaintiff, there is no need to implead the legal heir of Perumal Naidu. The petition was dismissed under Order 22 Rule 4 holding that Balammal is unnecessary party to the suit. Balammal did not challenge the dismissal order. Ultimately, suit was decreed on 04.06.2012. This decree has become final as there was no appeal either by the vendor Rajapandi or by Balammal, the alleged legal heir of Perumal Naidu. Only after a lapse of 5 years on 04.03.2016, she filed an objection petition in the execution stage.

6.The main contention raised by the learned counsel for the revision petitioner is that the claim petition ought not to have been dismissed by the executing court as the claim petitioner was not permitted to be impleaded in the suit in O.S.No.8/2011 during trial and therefore, the claim is legitimate and it ought to have been allowed.

7.The contention raised by the learned counsel for the plaintiff/decreed holder is that the claimant's husband who is the vendor to her vendor was added only as a formal party. The claimant's husband died on 02.11.2010. The suit was filed on 12.11.2011. Therefore, impleading petition was filed to implead the claim petitioner herein as the 3rd defendant in the suit. She was examined and she produced the death certificate of her husband. The claim that the impleading petition was time barred was accepted and the impleading petition was dismissed. It is pointed out that this dismissal does not prevent Balammal/claim petitioner either to file separate impleading application urging her ground of claim or to file an independent suit to establish her title when the suit itself was filed by Shanthi(decreed holder) for specific performance of the sale agreement executed by a third party. No step has been taken at that point of time. Even at the subsequent point of time opportunity given by this Court has not been utilised by the claim petitioner. No appeal has been filed challenging the decree in O.S.No.8/2011. When the claimant's



husband has executed the sale deed on 11.07.2005, the will has automatically become invalid which was executed 10 years before the date of sale deed. The execution of sale deed was well within the knowledge of the claimant as she is the witness in the sale deed. There is also a finding that the will is also not proved.

8.The main ground of attack by the claimant is that the suit itself was filed as against the dead person(Perumal Naidu) and therefore, the decree is null and void. This contention is absurd contention because suit was filed not only against the dead person (Perumal Naidu) but also against the executor of the sale agreement who is the main contesting party. As already pointed out, the 2nd defendant (claimant's husband) was the person who executed the original sale deed in favour of the 1st defendant that is, the person who executed the sale agreement in favour of the decree holder/Shanthi. When the suit has been instituted against a right person and the decree has been obtained after contest, mere inclusion of a dead person as a formal party would not invalidate the decree. The claimant and the objectors have used this court as a play field playing hide and seek game and thereby wasting the time of the court and thereby preventing the rightful owner of the property from enjoying the same. There are no valid or acceptable ground in the claim petition as well as in the objection petition. Therefore, the civil revision petition and the civil miscellaneous appeal are liable to be dismissed. Accordingly they are dismissed with the cost of Rs.10,000/- each payable by the defendants to the decree holder/plaintiff.

9.CMP(MD)Nos.1415 and 1417 of 2021 in CRP.SR(MD)No.7070 of 2021 have been filed by the claimant third party seeking leave to file CRP(MD)SR.Nos.7069 and 7070 of 2021 before this Court as against the common order dated 06.01.2021 passed in E.A.Nos.36 and 37 of 2020 in E.P.No.70 of 2019 in O.S.No.8 of 2011 on the file of the Additional District Court, Dindigul.

10.E.A.Nos.36/2020 and 37/2020 have been filed by the decree holder to break open the lock of the property and also to give police protection to the Amin for delivery of properties. E.A.No.38/2020 has been filed to remove the obstruction made in the property. The judgement debtor/1st defendant/1st respondent remained exparte. Admittedly, the claimant is not the petitioner in these applications. However, the Civil Revision Petition already filed by her (independently) has been considered on merits and found to be fit enough for dismissal only. Therefore, there



CRP(MD)No.249 of 2021 & CMP(MD)No.1486 of 2021,
CMP(MD)Nos.1415 and 1417 of 2021 in CRP(SR(MD)Nos.7070 and 7069 of 2021
and CMA(MD)No.143 of 2021 & CMP(MD)No.1228 of 2021

is no necessity to grant leave as it would be superfluous.
Therefore, CMP(MD)Nos.1415 and 1417 of 2021 in CRP.SR(MD)Nos.7070
and 7069 of 2021 are dismissed.

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Sd/-

Assistant Registrar (cS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To
The Additional District Judge,
Dindigul.

Copy to
The Section Officer,
V.R Section, Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+4 CC to M/s.S.C.VISHNUPRIYA, Advocate (SR-6298,7104 &6299[F] dated
19/02/2021)

+2 CC to M/s.D.NALLATHAMBI, Advocate (SR-6501 &6502[F] dated
22/02/2021)

COMMON ORDER MADE IN
CRP (MD) No.249 of 2021 & CMP (MD) No.1486 of 2021,
CMP (MD) Nos.1415 and 1417 of 2021 in
CRP.SR (MD) Nos.7070 and 7069 of 2021 and
CMA (MD) No.143 of 2021 & CMP (MD) No.1228 of 2021
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