



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2021**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.766 of 2020

and

C.M.P. (MD) No.5119 of 2020

C.Karuppaiah (Died)

1.K.Pandhan

2.K.Subramanian

3.K.Sekar

4.K.Manimegalai

5.K.Pitchaiammal

... Petitioners

vs.

1.V.Chinnammal

2.V.Chinnayan

3.V.Raj

4.A.Pandhan

5.A.Muthuveeran

6.Dhanuskodi

7.Arokiamary

8.Dhanalakshmi

9.Krishnammal

10.Jeyalakshmi

11.Vijayalakshmi

12.Venkatesh

13.Karthick

<https://hcservices.ecourts.gov.in/hcservices/>



14.Sangeetha

15.Selvaraj Velankanni

16.Mercy Jenifar

17.Pappammal

18.Murugeswari

19.Vellaisamy

20.Pappathi

21.Surendiran

22.Ravindiran

23.C.Krishanan

24.A.Mani

25.Chinnappan

26.A.Karuppaiah

27.C.Sunderasan

... Respondents

PRAYER:- Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 11.03.2020 made in I.A.No.1746 of 2018 in O.S.No.179 of 2014 on the file of the Principal District Munsif Court, Dindigul.

For Petitioners : Mr.R.Thangapandian

For R1 : Mr.H.Lakshmi Shankar

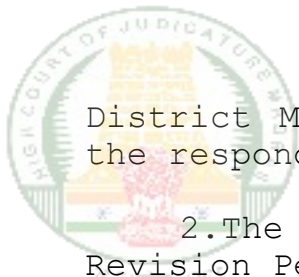
For R3 to R5 : Mr.V.Lakshmanan

For R6 to R11, R15,
R16, R27 : No appearance

For R17 to R19 &
R23 to R25 : Mr.A.Shajahan

ORDER

The plaintiffs, who are the revision petitioners before this Court, are challenging the order passed by the learned Principal
<https://hcservices.ecourts.gov.in/hcservices/>



District Munsif, Dindigul, dismissing their application to implead the respondents 6 to 27 as defendants 6 to 27 in the suit.

2.The brief facts necessary for disposing of the above Civil Revision Petition are as follows:-

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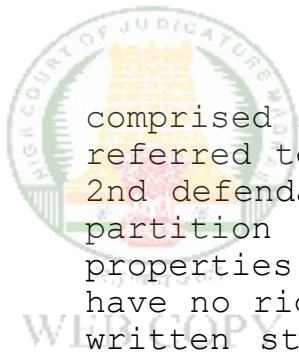
3.The plaintiffs had filed a suit O.S.No.179 of 2014 on the file of the learned Principal District Munsif, Dindigul, for declaration that they are the absolute owners of the suit schedule property and for injunction restraining the defendants 1 to 5, their men or agents from entering into the suit property and interfering with the plaintiffs' peaceful possession and enjoyment of the same.

4.The case of the plaintiffs is that the suit properties belonged to one Chinnathambi. The said Chinnathambi had a son, Chinnyan, who in turn, had two sons, Pandhan and Karuppiyah. The suit property comprised in S.No.201/12 measures total extent of 1 acre and 73 cents. In the year 1952, 1/3rd undivided share in the property was sold to Periyammal, W/o.Chinnakannu. The remaining 2/3rd share measuring an extent of 1 acre and 15 1/2 cents was jointly enjoyed by Pandhan, Karuppiyah and their heirs. In the year 1990, the said properties were mortgaged and were redeemed in the year 1993. Thereafter, in an oral partition amongst themselves, the suit properties fell to the share of the plaintiffs 1 to 5, who have been in enjoyment of the same. While so, the defendants 1 to 5 have been claiming right to the suit property and had also instituted a suit against them, which is also published in a Tamil Newspaper.

5.The plaintiffs would submit that the defendants taking advantage of the similarity in the names of the 1st plaintiffs' father, the 2nd defendant, the 1st plaintiff's uncle and the 4th defendant, claimed a non-existent right to the property. Therefore, the plaintiffs had come forward with the above suit. The open proclamation by the defendants on 21.01.2014 that they would take away the suit property from the plaintiffs has propelled the plaintiffs to file the said suit.

6.The defendants 1 and 2 have filed a written statement denying the claim of the plaintiffs and contending that there is no survey number as S.No.201/12 as claimed by the plaintiffs. It is the case of the defendants that much prior to the filing of the suit, the properties have been subdivided as S.Nos.201/12A and 201/12B. The property comprised in S.No.201/12B measured 0.32.00 Are in Patta No.2161 is standing in the name of the husband of the 1st defendant, the father of the 2nd defendant, Vellaiyan, A.Pandhan and A.Muthuveeran. S.No.201/12B is situate to the east of S.No.201/12A, north of S.No.215 and south of S.No.201/12. East of this property, there is a north-south oral pathway. None of these descriptions are found in the suit.

<https://hcservices.ecourt.gov.in/hcservices> 7.The defendants 1 and 2 would submit that the property



comprised in S.No.201/12B belongs to them. The suit, which has been referred to by the plaintiffs, is a suit for partition filed by the 2nd defendant's brother, Raju in O.S.No.295 of 2004, which is for a partition of the property comprised in S.No.201/12B and other properties. The defendants 1 and 2 would submit that the plaintiffs have no right to the suit properties. The defendants 3 to 5 in their written statement denied the claim of the plaintiffs stating that the suit property no longer exists as contended by the plaintiffs, since the property has been sold to several persons, who have in turn constructed houses and all of this has been suppressed by the plaintiffs in their plaint. The written statement of the defendants 3 to 5 has been filed in the year 2015.

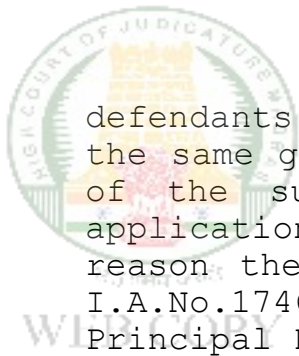
8.After the evidence of P.W1, the plaintiffs have come forward with the impugned application to implead the respondents 6 to 27. In the affidavit filed in support of the petition, they would submit that after the cross-examination of P.W1, they have come to know that the property has been sold to several persons and therefore, their presence was vital in the suit as any order passed in the suit will be binding on the said applicants. In the affidavit, the defendants have also referred to the said written statement of defendants 3 to 5.

9.The defendants have resisted the above application *inter alia* contending that the same was highly belated, since much prior to the institution of the suit, the third party interest has come into existence in respect of the property. The plaintiffs on the contrary have waited all these years to file the application to implead the proposed parties. They therefore pleaded that the suit had become barred as against the proposed parties.

10.The learned Principal District Munsif, Dindigul, by her order dated 11.03.2020, was pleased to dismiss the said application contending that the defendants even as early as in the year 2014 had mentioned about the third party interest, despite which the plaintiffs have not taken any steps to implead the proposed parties. Challenging this application, the plaintiffs are before this Court.

11.Heard the learned counsels on either side.

12.The records would show that even as early as in the year 2014 in the written statement filed by the defendants, they have clearly mentioned about the fact that third party interests have been created in respect of the suit property and that the suit is bad for non-joinder. Despite being put on notice even in the year 2014, the petitioners have not come forward to implead these persons. Now, after P.W1 has been examined, the present application has been taken. That apart, in the affidavit filed in support of the impugned petition, the plaintiffs had come forward with the false statements that it was only during the cross-examination that they



defendants 3 to 5 have in their written statement mentioned about the same giving details of the persons, who have purchased portions of the suit property. Therefore the very basis on which the application has been filed is erroneous and false. I do not find any reason therefore to set aside the order dated 11.03.2020 made in I.A.No.1746 of 2018 in O.S.No.179 of 2014 on the file of the Principal District Munsif Court, Dindigul.

13.In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Principal District Munsif
Dindigul.

+2 CC to M/s.R.THANGAPANDIAN, Advocate (SR-39134[F] dated 16/12/2021)

+2 CC to M/s.A.SHAJAHAN, Advocate (SR-39237[F] dated 17/12/2021)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-39321[F] dated 17/12/2021)

C.R.P. (MD) No.766 of 2020

16.12.2021

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