



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.07.2021

Delivered On : 28.07.2021

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CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) .No.1926 of 2017

and

C.M.P. (MD) .No.9910 of 2017

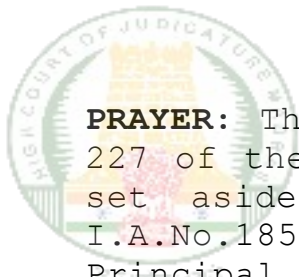
- 1.G.Rajendran
- 2.Vijendran
- Mahendran (Died)
- 3.Chandramohan
- 4.Chandramouzhi
- 5.Indhra
- 6.Sumathi
- 7.Santhosh
- 8.Durga

... Petitioners

Vs.

- 1.Chitra
- 2.The Tahsildar,
Kumbakonam.
- 3.The Revenue Divisional Officer,
Kumbakonam.
- 4.The District Revenue Officer,
Thanjavur.
- 5.The District Collector,
Thanjavur District.
- 6.The Sub Registrar,
Kumbakonam.
- 7.Vasuki
- 8.Jaiganesh
- 9.Jeyaseelan
- 10.Arthanatheeswaran
- 11.Pratheepa
- 12.Krithika
- 13.Lanco Tanjore Power Company Limited,
(Formerly Known as M/s.Aban Power Company Limited)
by its Managing Director having his office at
No.25, G.N.Chetty Road, T.Nagar, Chennai - 17.
Respondents 1 to 12 were set exparte
in I.A. Hence, notice may be dispensed with

... Respondents



PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records and to set aside the fair and decreetal order dated 06.08.2016 in I.A.No.185 of 2016 in O.S.No.621 of 2010 on the file of the Principal District Munsif Court, Kumbakonam.

For Petitioners : Mr.M.Maria Vinola
For 1st Respondent : Mr.A.Senthil Kumar
For Respondents 2 to 12 : Exparte vide E.B.
For 13th Respondent : No Appearance

ORDER

This petition has been filed to set aside the order in I.A.No.185 of 2016 in O.S.No.621 of 2010 dated 06.08.2016, on the file of the Principal District Munsif Court, Kumbakonam.

2.The petitioners herein are the plaintiffs and the respondents herein are the defendants in the suit. The respondents have filed a suit in O.S.No.621 of 2010, seeking the relief of injunction. Pending suit, the petitioners herein have filed a petition in I.A.No.185 of 2016 to implead the 13th respondent as proposed 13th defendant in the suit.

3.Brief substance of the petition in I.A.No.185 of 2016 is as follows:

The petitioners are the plaintiffs. The first respondent have executed a mortgage deed in favour of the proposed 13th defendant on 11.04.2008 with regard to the first item of the suit property. On 26.02.2009, the first respondent executed a sale deed regarding the second item of the suit property in favour of the proposed 13th defendant. Only recently the plaintiffs came to know about these documents. The first respondent is not having any right to execute any documents regarding the suit items 1 and 2. There is a possibility of the proposed 13th defendant to create an encumbrance in the property. To avoid those things, the 13th respondent is to be impleaded as the 13th defendant.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The 13th respondent is not a necessary party to the suit. There is no cause of action against the proposed 13th defendant. Only to drag on the case, this petition is filed by the plaintiffs.

5.Brief substance of the counter filed by the 13th respondent therein is as follows:

The 13th respondent is not a necessary party to the suit. There is no cause of action against the 13th respondent. The first respondent has borrowed a sum of Rs.8,82,000/- (Rupees Eight Lakhs



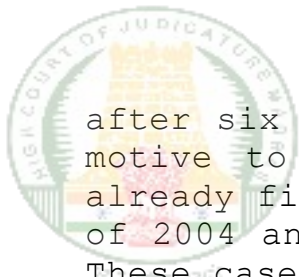
and Eighty Two Thousand only) from the 13th respondent and has executed a mortgage deed regarding the first item of the suit property. The first respondent executed a sale deed regarding the second item of suit property for valuable consideration. The 13th respondent is enjoying the properties. The plaintiffs are aware of the transaction during the year 2008 - 2009. The 13th respondent is having a right over the property but there is no necessity to implead him in the suit.

6. After hearing both side counsel, the trial Court dismissed the petition. Against which, the petitioner has come forward with this Civil Revision Petition.

7. On the side of the petitioners, it is stated that only on the ground of delay, the trial Court has dismissed the impleading petition. The 13th respondent is a proper and necessary party. Delay is a mixed question of law and fact. It has to be decided, only after considering the evidence and not on the threshold. The trial Court failed to consider as to whether the Will executed by the first respondent dated 28.02.1962 has come into force and the partition deed dated 16.11.1966 has come into force. Without deciding these issues, the learned Principal District Munsif has come to an erroneous conclusion. The fourth respondent passed an order to seek the remedy before the civil Court regarding the issuance of patta in the name of the first respondent. The trial Court failed to consider that the second respondent refused to grant patta in the name of the first respondent. When the title is in question, the first respondent has no right to execute either the mortgage or the sale deed. Only with an intention to defraud the rights of the petitioners, the first respondent has executed these documents and hence, impleading the 13th respondent as the 13th defendant is necessary.

8. On the side of the petitioners, it is stated that the first respondent claimed to have cancelled the sale deed. Notice was sent and a cancellation deed was executed. However, to prove all these things, the documents regarding the cancellation are necessary and hence, the petition is to be remanded back to the trial Court. All the suits, which were filed by the petitioners, prior to the present suit were dismissed.

9. On the side of the respondents, it is stated that the suit is for injunction, not to alienate the property and for issuance of joint patta in the name of plaintiffs and defendants 7 to 12. But the prayer is not to register any documents regarding the suit properties. The defendants filed the written statement on 16.09.2011 stating that the property was sold to the 13th respondent even before 1½ years prior to the suit. But no steps were taken by the petitioners to implead the 13th respondent. Only



after six years, the impleading petition was filed, with the only motive to drag on the Court proceedings. This petitioners have already filed four suits in O.S.Nos.43 of 2004, 139 of 2004 and 63 of 2004 and 27 of 2007. All the suits were dismissed for default. These case are not restored till today.

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10.On the side of the respondents, it is stated that the plaintiffs are contesting the case on the basis of a Will alleged to have been executed by the grandfather of the plaintiffs and the defendants are contesting the case on the basis of a partition deed. The 13th respondent is not a necessary party before the trial Court. The trial Court has given detailed reasoning. Though in the written statement, the execution of document in favour of the 13th respondent was mentioned, the plaintiffs have taken six years to file the impleading petition. The main issue to be decided is whether the Will or partition deed is acceptable and for deciding this issue, impleading the 13th respondent is not necessary. The petitioners have raised objections before the registrar office and hence, the sale deed was cancelled on 04.01.2021. The sale deed was not accepted by the fourth respondent. The entire civil Revision Petition itself is infructuous.

11.On the side of the petitioners, it is stated that two documents were filed before the Court and an opportunity to examine witness on the basis of the documents were not given. These two documents are to be marked in the case and prayed the revision to be allowed.

12.The claim of the revision petitioners is that there are some documents executed in favour of the 13th respondent. The claim of the respondents is that the sale deed executed in favour of the 13th respondent was not registered and the document was cancelled.

13.A verification of the records reveals that the fourth respondent has rejected the registration of the documents. It is seen that even 1½ years prior to the suit, a mortgage deed was executed in favour of the 13th respondent by the first respondent.

14.In the above circumstances, the 13th respondent is to be impleaded as a party to the suit. Only after the marking of the documents and on adducing evidence, the trial Court can come to a conclusion regarding the admissibility of the documents. To avoid multiplicity of the suit, the impleading of 13th respondent is necessary. An opportunity for the defendants to file written statement and to file additional written statement has to be given.

15.Hence, the Civil Revision Petition is allowed and the order passed in in I.A.No.185 of 2016 in O.S.No.621 of 2010 dated 06.08.2016 on the file of the Principal District Munsif Court,



Kumbakonam is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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// True Copy //

/ /2021

Sub Assistant Registrar (CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Principal District Munsif,
Kumbakonam.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

C.R.P. (PD) (MD) .No.1926 of 2017

28.07.2021

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