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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2022

DELIVERED ON : 10.06.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.70 of 2015

M.Selvaraj

... Petitioner/Petitioner/
/Proposed Plaintiff.

vs.

1.Jayadevi Krishnasamy
2.Vignarajah
3.Sharmila Vignarajah
4.Sikhwindar Singh
5.Dalwindar Kaur
6.The Manager
Indian Overseas Bank
Adyar Branch, Chennai-20
7.Valli Suriyakumaran
8.S,Ganesan
9.Srikanda
10.Gunanayagam
11.Selvaratnam
12.Nataraja

... Respondents/
Respondents/Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed in I.A.No.291 of



2013 in O.S.No.14301 of 2010 dtd 06.11.2014 on the file of the III
Additional City Civil Court, Chennai.

For petitioner : M/s.M.L.Ramesh

For respondents : Mr.M.Muthappan, for R5 and R6

ORDER

This Civil Revision Petition has been filed challenging the order of dismissal passed in I.A.No.291 of 2014 by order dated 06.11.2014. The proposed 2nd plaintiff who filed the petition in I.A.No.291 of 2013 seeking to implead her as 2nd plaintiff in the suit in O.S.No.14301 of 2010 is the Revision Petitioner.

2. The Plaintiff viz., Jeyadevi Krishnasamy/1st respondent in the present revision petition has filed suit for declaration to declare 3/4th share in the plaint 'A' and 'B; schedule of the properties, rendition of accounts, partition, consequential injunction with costs.

3. As per the averments in the plaint, the plaintiff was employed as a



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Teacher in Srilanka and she retired from service. Her husband was employed as Lecturer at Jaffna College, Vaddukoddai, Sri Lanka and they got married in the year 1961. According to the plaintiff, her husband purchased properties in Sri Lanka, Singapore and in India. The plaintiff's husband purchased the plaint 'A' Schedule property at Chennai. The plaint 'B' schedule consists of the monies available in the account of plaintiff's husband in the Indian Overseas Bank, Adyar, Chennai-21. The plaintiff's husband died at Chennai on 12.06.1996. The 3rd defendant was an employee of plaintiff's husband. The 3rd defendant filed Probate No.1363 of 1996 on the file of Subordinate court of the Republic of Singapore seeking to probate the Will which he claims that the plaintiff's husband executed on 27.06.1988, appointing the 3rd defendant as his Executor and bequeathed the property namely Lot 158, situated at 34, West Coast Place, Singapore, in favour of the 4th defendant. 4th defendant is the daughter of 3rd defendant.

4. Plaintiff's husband had a sister viz., Selvaratnam Padmanathan who is the 12th defendant and her husband is the 1st defendant, their daughter is the 2nd defendant. The 1st defendant filed O.P.No.503 of 1996 on the file of this court claiming that the plaintiff's husband left a Will



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dated 11.6.96 bequeathing the plaint 'A' Schedule property to the 2nd defendant and the B schedule and the property situate in Singapore and Sri Lanka in favour of the plaintiff. The plaintiff's husband died at Chennai on 12.06.1996. When the Will was about to be probated, the plaintiff objected to the Probate and the plaintiff stated that the signature found in the Will is not that of her husband. The said O.P.No.503 of 1996 has been converted as Testamentary Original Suit and the same is pending adjudication on the file of City Civil Court in T.O.S.No.12494 of 1996.

5. It is further stated that the plaintiff is a permanent resident of Srilanka. Pending the suit filed by her, she had assigned her title, right over the property to T.M.Annammal, mother of the Revision Petitioner under a registered Sale deed bearing Document No.266 of 2006 dated 08.02.2006 on the file of Sub-Registrar, Adyar. The mother of the Revision Petitioner in turn had settled the property in the name of the Revision Petitioner under a deed of settlement bearing Document No.1793 of 2007 dated 28.09.2007 registered on the file of Sub-Registrar, Adyar.

6. According to the Revision Petitioner, the second defendant had also sold his share of the property to her, under a registered sale deed



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bearing Document No.634 of 2007, dated 28.03.2007 on the file of Sub Registrar, Adyar. Thereby, the Revision Petitioner had become the absolute owner of the property and under the assignment, had become entitled to continue the proceedings of the suit. Therefore, the Revision Petitioner filed I.A.No.291 of 2013 in O.S.No.14301 of 2010 on the file of III Additional City Civil Court, Chennai, seeking to implead himself as plaintiff in the suit and continue the same under Order XXII Rule 10 of CPC, though the provision had been wrongly quoted in the petition.

7. The 4th defendant in the suit filed counter affidavit submitting that the petitioner is the illegal purchaser and not a party to the suit in whatsoever manner. Further, after purchase of the A schedule property, without the knowledge of other parties, illegally demolished a portion of the suit property and reconstructing without any authority. It is further stated that suit itself is not disposed off and the petitioner could not be made as a party and the purchase made by him, during pendency of the suit is a sham transaction and the petition is not maintainable.

8. The learned Trial Judge, having considered the submissions made on either side, dismissed the I.A., holding that during the pendency of the



suit, when the petitioner raised the claim that she is the purchaser of the property and having rights and sought to be added as a party, it can be done only by adding the petitioner as a defendant in the suit but not as plaintiff in the suit. It was further pointed out by the learned Judge that the defendants in the suit raised strong objection against the petition for impleadment and in such circumstances, there is no substantive materials produced for seeking such claim, and as such the petition lacks merit and in such view, dismissed the I.A.

9. Aggrieved by the said dismissal of the I.A., this Civil Revision Petition is preferred. The learned counsel for the Revision Petitioner would mainly place his arguments stating that quoting wrong provision in the petition it has been filed under Order 1 Rule 10 CPC instead of Order 22 Rule 10 CPC, cannot be a ground for dismissing the I.A. The learned counsel further argued that the Revision Petitioner, under the assignment, entitled to continue the proceedings of the suit. In this regard, the learned counsel relied on the following rulings:-

(a) Civil Appeal No.10521 of 2013 dated October 4,2019
[PruthivirajNodhubha Jadega (D) by Lrs., Vs. JayeshkumarChhakaddas Shah and Others]



(b) CDJ 1983 MHC 407 [C.K.R.C.N.K.R.Adhappa Chettiar and others Vs. R.M.Meenakshi Achi and others]

© 2005(2) SCC 403 [Amit Kumar Shaw and another Vs. Farida Khatoon and another]

(d) 1995(1) SCR 1369 [Judgalkishore Saraf Vs. M/s.Raw Cotton Co.Ltd.]

Relying on the above decisions, it is argued by the learned counsel that even though the devolution of interest occurred when the case was pending in the trial court, the application under Order 22 Rule 10 CPC can be made to save honest and bona fide claimants from being non-suited.

10. Heard the learned counsel appearing for both sides.

11. The suit filed in between the parties was in respect of partition and separate possession in respect of suit property and the revision petitioner is claiming to be the assignee of settlement deed from her mother who purchased the suit property from the plaintiff and the 2nd defendant pending suit. So, it is beneficial to reproduce Order 22 Rule 10 CPC which reads as follows:-



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10. PROCEDURE IN CASE OF ASSIGNMENT BEFORE FINAL ORDER IN SUIT.

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)

Order 22 CPC deals with the creation, assignment or devolution of interest during the pendency of suits. By leave of the court, the suit be continued by or against the person to or upon whom such interest has come or devolved. The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub rule (1). Such creation, assignment or devolution may arise in the following circumstances:

- i. Death of a party
- ii Marriage of a party
- iii. Insolvency of a party
- iv. Assignment of interest

12. The Revision Petitioner's mother Annammal purchased the



property and title was said to be assigned to her by the plaintiff pending suit, by way of registered sale deed. The mother of the petitioner in turn had settled the property in the name of the petitioner under a deed of settlement. So the disputes in between the parties to the suit have got no connection whatsoever with the present petitioner. In my opinion, Order 22 Rule 10 CPC is not applicable to the Revision Petitioner as the Plaintiff who filed the suit is well alive.

13. The Revision Petitioner had obtained the settlement deed from her mother who purchased the suit property from the plaintiff. Knowing fully well about the pendency of the suit. Section 52 of the Transfer of Property Act, 1882 will apply because any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court. There cannot be two plaintiffs in the suit claiming the suit property. The subsequent purchaser can be impleaded as defendant in the suit and not as a plaintiff in the suit and therefore, even provisions under Order 22 Rule 10 CPC will not come to the



rescue of the Revision petitioner/proposed plaintiff.

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14. The plaintiff and the defendants have been litigating since 1996. In such a situation, if at all the Revision Petitioner has got any claim, she can file necessary application before the court below to implead herself as defendant but not as the Plaintiff since the plaintiff who filed the suit is well alive and the prayer sought in the suit is for partition and separate possession in the suit A and B schedule properties and also for a direction to the 1st defendant to render accounts of monies collected by him towards rent from the tenant of Plaint A Schedule property and to hand over the same to her. In such view of the matter, the reference made to the above relied on legal proposition has no application in the present case and as such the argument advanced by the counsel seeking the impleadment of revision petitioner as plaintiff in the suit under XXII Rule 10 of CPC though the provision had been wrongly quoted in the petition, does not sound acceptance.

15. In view of the above position, the Civil Revision Petition is dismissed. The order passed in I.A.No.291 of 2013 in O.S.No.14301 of 2010 on the file of III Additional City Civil Court, Chennai, dated 06.11.2014 is



confirmed. No costs.

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Index :yes/No
Internet:yes/No
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10 .06.2022

To

1. The III Additional City Civil Court, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

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PRE-DELIVERY ORDER
MADE IN
CRP.No.70 of 2015

DATED : 10 .06.2022