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C.R.P.(NPD)No.2216 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(NPD).No.2216 of 2018

and

C.M.P.No.13971 of 2018

1.Solaiammal
2.Rani
3.Vasanth
4.Kumariammal
5.Kuppan
6.Dayalan
7.Bhoopathy
8.Radhakrishnan
9.Valliammal
10.Muniammal
11.Chenjiyammal
12.Dhanalakshmi
13.Rukkumani
14.Anitha

... Petitioners

vs.

1.Rajammal
2.Balammal
3.Rudrappan
4.Elango
5.S.Chandra

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.11.2017 in I.A.No.105 of 2016 in A.S.No.29 of 2010 on the file of the Subordinate Judge's Court, Tambaram.



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For Petitioners : Mr.P.Valliappan

For Respondents : No appearance

ORDER

Heard Mr.P.Valliappan learned counsel for the revision petitioners.

2. It would have been more appropriate had there been a representation on behalf of the first respondent who was the plaintiff in O.S.No.301 of 2005 in which, Judgment and Decree was passed by the learned District Munsif, Tambaram on 30.03.2010 and who was the appellant in A.S.No.29 of 2010, now pending on the file of the Sub Court at Tambaram.

3. The suit in O.S.No.301 of 2005, had been filed by the first respondent herein/Rajammal against four defendants. It was pleaded that the said defendants claim to have purchased a part of the suit property from the first defendant/Balammal. It was denied that the plaintiff had ever sold a portion of the property to the first defendant. Alleging as above, the plaintiff had filed the suit for injunction to protect her possession.

4. A written statement was filed questioning the rights of the plaintiff therein.



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5. After trial, Judgment was passed on 30.03.2010, dismissing the said suit.

6. During the course of trial, the plaintiff had examined herself as P.W.1 and had also marked Exs.A1 to A7. Two witnesses were examined on the side of the defendants and Exs.B1 to B18 were marked. An Advocate Commissioner had also been appointed and the Reports and Sketch of the Advocate Commissioner were also marked as Exs.C1 to C4.

7. Questioning to that particular Judgment and Decree, the plaintiff had filed A.S.No.29 of 2010. Pending that particular First Appeal, the revision petitioners herein filed I.A.No.105 of 2016 under Order I Rule 10(2) of CPC, seeking to implead themselves as plaintiffs in the suit and to be recognized as further plaintiffs in the suit.

8. That application came up for consideration before the Sub Court at Tambaram and by order dated 17.11.2017 it was dismissed. This is the reason for filing the present Civil Revision Petition.



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9. Unfortunately, though notice had been directed to the first respondent/plaintiff, and the name is also printed in the cause list, and though counsel had entered appearance, there is no representation.

10. In these circumstances, Mr.P.Valliappan, learned counsel stated that pressing the present revision petition would be an exercise in futility. It is also stated by the learned counsel that the revision petitioners herein had filed a comprehensive suit seeking the reliefs of declaration in O.S.No.294 of 2015, declaring that all the documents executed subsequent to the Settlement Deed in the year 1928 as null and void and also for permanent injunction, to protect their possession.

11. It is the contention of the learned counsel Mr.P.Valliappan, that since in that particular suit all the issues have been raised, instead of pursuing the present revision petition further, the petitioners herein may be permitted to pursue further O.S.No.294 of 2015. Learned counsel however pleaded that not seeking to pursue further the revision petition on merits should not be held against them. It is also stated that in spite of the observation in I.A.No.605 of



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2016, still the contentions raised by them should also be considered. They must be granted liberty to raise those contentions in the said suit also.

12. The suit in O.S.No.294 of 2015 has been filed on a cause of action which the plaintiffs therein/revision petitioners herein allege to have arisen seeking the relief of declaration declaring that all the registered documents executed subsequent to the Settlement Deed in the year 1928 are null and void. That suit should proceed in manner known to law.

13. The order in I.A.No.105 of 2016 should not be held as against the plaintiffs in O.S.No.294 of 2015 since issues raised in O.S.No.294 of 2015, will have to be decided on the basis of the pleadings therein and on the basis of the evidence adduced.

14. With that particular observation, the present Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index:Yes/No
Speaking Order:Yes/No
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C.V.KARTHIKEYAN, J.

ssi

To:

- 1.The Subordinate Judge, Tambaram.
- 2.The Section Officer,
V.R.Section, High Court of Madras.

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