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CRP.(PD)No.1281/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

CRP.(PD)No.1281 of 2022
and C.M.P.No.6866 of 2022

1.P.Abhishek
2.L.Ashish

... Petitioners

Vs

1.Rajeswari
2.Suseela
3.Manoharan
Represented by their Power of Attorney
R.Ramaravindrakumar

4.The Sub – Registrar,
Avadi.

...Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair & decretal order dated 17.03.2022 passed by the Learned Additional District Munsif, Poonamallee, in I.A.No.1353 of 2011 in O.S.No.1074 of 2004 and consequently dismiss the said I.A.No.1353 of 2011.



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For Petitioner : Mr.S.Parthasarathy,
Senior Counsel
Asst. by Mr.R.Sivaraman
For R1 to R3 : Mr.Arivazhagan
For R4 : Mr.P.Harish,
Government Advocate

ORDER

In a suit for partition pending since 2004, a certain order of injunction came to be passed against the 8th defendant/Sub Registrar, Avadi vide order dated 17.03.2022 in I.A.No.1353 of 2011 in O.S.No.1074 of 2004, injunctioning the official from registering any document. This is now in challenge in this Revision.

2.Mr.S.Parthasarathy, learned senior counsel for the revision petitioners submitted the facts as follows:

- A certain Tirumalai Naicker, the first defendant in the suit was married twice. He was first married to Saradha, through whom he had begotten plaintiffs 1 to 3. After the demise of Saradha in 1962, the first defendant married certain Suseela, the second defendant herein and he



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has three children, namely D3 to D5, born to him through her. The suit is laid for partition of five items of properties. The allegation of the plaintiffs is that the properties described in plaint item Nos.1 and 2 were purchased in the name of the first defendant out of the business income of his first wife Saradha. The further allegation is that the properties mentioned in items 3 and 4 was purchased out of the income of the items 1 and 2.

- About the time when the suit was laid, the first defendant sold items 1 and 3 to certain Pugazhendhi on 09.12.2004 and it is not adequately clear whether this sale was either before the suit was laid or after the suit. The plaintiff would now file I.A.No.1332 of 2006 for impleading Pugazhendhi, referred to as purchaser of items 1 and 3 and this application came to be dismissed on 20.09.2007. This order has become final.
- Thereafter, on 28.10.2011, the revision petitioners purchased the aforesaid items 1 and 3 from Pugazhendhi. Now, the plaintiff had taken out I.A.No.1354 of 2011 for impleading the revision petitioners and



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also Pugazhendhi. Along side, they also filed I.A.No.1353 of 2011 for an order of interim injunction to restrain the Sub Registrar, Avadi, namely the 8th defendant, not to register any document. I.A.No.1354 of 2011 was kept pending for close to seven years, and it finally came to be allowed on 07.07.2018. Till date, neither the plaint was amended nor the revision petitioners were served with suit summons.

- I.A.No.1353 of 2011 however, was kept pending for another four years, and was ordered on 17.03.2022. In fitness of things, the revision petitioners ought to have been made parties to I.A.No.1353 of 2011 and must have heard, since it is their right of alienation which is now in jeopardy.

3. The Registry was required to obtain a report from the trial court (Additional District Munsif, Poonamallee) as to why it kept pending I.A.No.1354 of 2011 for seven years and I.A.No.1353 of 2011 for 11 years. It was also required to report whether amendment has been carried out to the plaint in terms of the order passed in I.A.No.1354 of 2011.



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4.The report of the learned Additional District Munsif, Poonamallee dated 27.04.2022 is received. The said report hardly helps the Court in understanding why the Court did not ensure that the plaintiffs carried out amendments pursuant to the order passed in I.A.No.1354 of 2011, directing the impleadment of the revision petitioners herein. Indeed, the report is literally silent on it and yet, it is said the Court has heard I.A.No.1353 of 2011.

5.This Court would have appreciated if the learned Judge realised that it ought to have heard all those who are likely to be affected by the order she was passing, more so, when the parties who are likely to be affected thereby were ordered to be impleaded Vide the order in I.A.No.1354 of 2011. At least, the plaintiffs' counsel should have been fair enough to alert the Court about the impleadment of the present revision petitioners and even that is seen not to have been done. In essence, there has been a failure in extending procedural fairness to the revision petitioners and this has upset the very



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course of Justice. After all, the only courtesy the Court can grant a litigant is an audience in every matter where a litigant is likely to be affected by the order of the Court.

6.In fine, this Court chooses to set aside the order passed in I.A.No.1353 of 2011 and remands the matter back to the trial Court. Since the plaintiffs have not chosen to implead the revision petitioners, nor the learned trial Judge did consider it fit to implead them, this Court now *suo moto* impleads the revision petitioners in I.A.No.1353 of 2011.

7.This Civil Revision Petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

8.This Court is informed the suit is posted before the Trial Court on 09.06.2022, on which date, the plaintiffs shall carry out the amendment, both in pursuance to the order passed in I.A.No.1354 of 2011 and also in terms of the direction herein given. The revision petitioners are at liberty to file their



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counter in I.A.No.1353 of 2011, if they are so desirous. Once the pleadings are complete in I.A.No.1353 of 2011, the trial Court shall dispose of the matter within the next 15 days. It is underscored the trial Court is required to dispose of this I.A.1353 of 2011 not later than June 2020 and strictly follow the time schedule provided.

9.Having stated thus, this Court is aghast that a suit filed some 18 years ago should still continue to decorate the dockets of the Court. Therefore, the trial Court shall endeavour and spare its best efforts to dispose of the suit within a period of four (4) months from today.

10.The pleadings in the suit is directed to be completed by 30.06.2022 and the trial shall commence by 15.07.2022 and shall be posted on a day by day basis and the learned Additional District Munsif, Poonamallee is required to file a fortnightly report on the compliance of this direction given by this Court.



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11.The Principal District Judge, Thiruvallur is also required to ensure that the learned trial Judge complies with this order with utmost seriousness.

12.Till the pleadings in I.A.No.1353 of 2011 is complete, there will be an order of *status quo*.

29.04.2022

Index : Yes/No
Speaking Order/Non Speaking Order
Tsg/dk



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To

- 1.The Additional District Munsif,
Poonamallee.
- 2.The Principal District Judge,
Thiruvallur



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N.SESHASAYEE, J.,

Tsg/dk

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