



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

CRP.No.2572 of 2021

B.Selva Kumar

...Petitioner

Vs

1.R.Anthony
2.R.Andrews
3.R.Arul
4.F.Lousy
5.Agness

...Respondents

PRAYER Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in I.A.No.9 of 2018 in O.S.No.3626 of 2015 dated 01.02.2019 passed by the learned XVII Additional City Civil Court Judge at Chennai.

For Petitioner : Mr.R.Muniyapparaj

For R-1 : Mr.V.Perumal

For R-4 : Mr.Muthuramalingam

For R2 & 3 : No Apperance

For R5 : No Apperance

ORDER

Challenging the order impleading him as a defendant in suit O.S.No.3626 of 2021, the revision petitioner/proposed defendant is before this Court. The brief facts of the case are as follows:-

2.The first respondent herein had filed a suit in O.S.No.3626 of 2015 on the file of the XVII Additional City Civil Court Judge at Chennai for declaration that the settlement



deed dated 11.02.2005 in Document No.966 of 2005 on the file of the Sub Registrar, Sembiam executed by the plaintiff's father in favour of 3rd defendant in respect of the properties mentioned in the suit schedule is null and void and for granting a preliminary decree for partitioning the suit schedule properties in five equal shares allotting 1/5th share with the plaintiff.

In his pleadings the plaintiff had stated as follows:-

"6. The Plaintiff states that but the third defendant had fraudulently directly took their father to the Sub Registrar office, Sembiam to get the property illegally by way of registered the Settlement Deed in her favour. The Settlement Deed dated 11-02-2005 has been registered as Document viz, Door.No.966/2005, registered at Sub Registered Office, Sembiam in Book No.I for the whole property of 2400 sq.ft. Instead of 1200 sq.ft., since he already sold 1200 sq.ft. Hence the Settlement Deed dated 11-02-2005 registered as Door.No.966/2005 is invalid in the eye of law."

3. Thereafter, the plaintiff has come forward with the impugned interlocutory application for impleading the proposed party as a sixth defendant. The basis on which the plaintiff would seek to implead the petitioner herein is that his father had executed a settlement deed in favour of the fourth defendant Lousy. The settlement deed was executed within a few days of the plaintiff's mother death and his father was totally under the control of the fourth respondent. In the said deed, even the property that has been sold to the proposed defendant had been included and therefore, there is a necessity to include the proposed party as a fifth defendant.

4. The Revision petitioner had filed a counter stating that he is neither a necessary nor a proper party in this proceedings. The sale in his favour has taken place in the year 1992 and the purchase was made from C.Raja, the father of the plaintiff himself. He would submit that the first defendant had also witnessed the said documents. Further the proposed party has also put up construction in the year 1996 after obtaining a loan. He has been in continuous possession and enjoyment of the said property. Therefore no claim can be made in respect of the property sold to the fifth respondent. He would submit that he is therefore an unnecessary party to the proceedings.

5. The learned Counsel appearing for the plaintiff would state that no relief is sought against the proposed party, but that he was sought to be impleaded only for obtaining a binding order. The learned Counsel appearing for the fourth respondent would also oppose the order and submit that the proposed party



is not a necessary party to the proceedings.

6. Heard the learned Counsels for both sides. The plaintiff even in his plaint has stated that the property has been sold as early as in the year 1992 by his father in favour of the proposed party. The plaintiff has gone on to state that the property has been clandestinely included in the settlement deed the fourth defendant. Therefore he would want to implead the proposed party whose property has also been included in the settlement deed as he is a necessary and proper party. The sale in favour of the proposed party has taken place much before the filing of the suit and the sale in his favour is also admitted by the plaintiff. The application has been filed after such a long time and further no relief is also sought against the Revision petitioner. Therefore, there is no necessity to have him added as a defendant. The Court below has simply overlooked the fact that no relief is claimed against the proposed parties.

7. In the result the Civil Revision petition filed to set aside the fair and decretal order in I.A.No.9 of 2018 in O.S.No.3626 of 2015 dated 01.02.2019 passed by the learned XVII Additional City Civil Court Judge at Chennai is allowed. No costs.

Sd/-
Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

gd

To

The XVII Additional City Civil Court Judge
Chennai.

+1cc to Mr.S.John Josh, Advocate SR.No.7976

CRP.No.2572 of 2021

PL(CO)
GMY(02/03/2022)