



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.621 of 2017

1.Panneerselvam

2.Annamuthu

... Petitioners/Petitioners/
Defendants 1 & 2

vs.

1.Durairaj

... 1st Respondent/1st Respondent/
Plaintiff

2.The Tahsildar,
Ilayangudi Nagar,
Ilaiyangudi,
Ilaiyangudi Taluk,
Sivagangai District.

3.The Revenue Divisional Officer,
Office at Majeeth Road,
Sivagangai Town,
Sivagangai Taluk,
Sivagangai District.

4.The District Collector,
Office at Collectorate Complex,
Sivagangai Town,
Sivagangai Taluk,
Sivagangai District.

... 2 to 4 respondents/2 to 4 respondents
/3 to 5 Defendants

5.A.Micheal

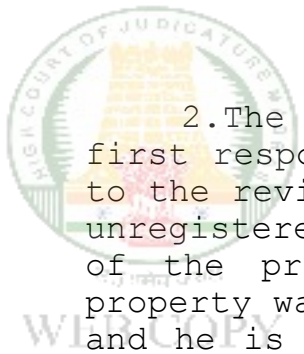
... 5th Respondent/5th Respondent/
Proposed 6th Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India set aside the fair and decreetal order dated 20.12.2016 in I.A.No.556 of 2016 in O.S.No.193 of 2012 on the file of the Sub Court, Sivagangai.

For Petitioners	: Mr.H.Lakshmi Shankar
For R1	: Mr.N.Ilango
For R2 to R4	: Mr.A.Kannan Additional Government Pleader
For R5	: No Appearance

O R D E R

The Civil Revision Petition has been filed challenging the order passed by the Sub Court, Sivagangai in I.A.No.556 of 2016 in O.S.No.193 of 2012, dated 20.12.2016.



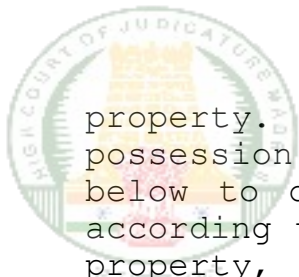
2.The revision petitioners are the defendants 1 and 2 and the first respondent is the plaintiff in O.S.No.193 of 2012. According to the revision petitioners, the suit property was sold by virtue of unregistered sale deed dated 18.06.1993 and they are in possession of the property. According to the first respondent, the suit property was sold by virtue of registered sale deed dated 29.06.2012 and he is in possession of the property. In these circumstances, the first respondent/plaintiff has filed a suit in O.S.No.193 of 2012 for declaration and consequential injunction. During the pendency of the suit, the revision petitioners/defendants 1 and 2 filed an application in I.A.No.556 of 2016 before the Court below to implead the vendor viz., Michael, who sold the property to both the revision petitioners/defendants 1 and 2 as well as the first respondent/plaintiff. But, the Court below after hearing both the parties, rejected the said application without assigning any proper reason. Challenging the same, the present revision petition has been filed. Now the suit in O.S.No.193 of 2012 was transferred to Sub Court, Manamadurai and re-numbered as 258 of 2019.

3.Learned counsel appearing for the revision petitioners/defendants 1 and 2 contended that the revision petitioners have purchased the suit property by virtue of unregistered sale deed, dated 18.06.1993 and they are in possession for more than 12 years. In this regard, they have filed a written statement along with counter claim before the Court below. Thereafter, he has filed an application to implead the original vendor to adjudicate the counter claim. Thus, it is necessary to implead the original vendor. However, the same was rejected. Therefore, the order of the Court below may be set aside and appropriate direction may be issued to implead the original vendor.

4.On the other hand, the learned counsel appearing for the first respondent submitted that the sale deed said to have been executed in favour of the revision petitioners is only an unregistered sale deed. On the unregistered sale deed, they cannot claim right for immovable property and the sale deed executed in favour of the first respondent/plaintiff is a registered sale deed. Therefore, the first respondent is the owner of the suit property and this aspect was considered by the Court below in a proper perspective and there is no need to interfere with the order passed by the Court below and he prayed for dismissal of the revision petition.

5.Heard the learned counsel for the revision petitioners as well as the learned counsel for the respondents and perused the materials available on record.

6.Upon hearing the learned counsel for the revision petitioners as well as the learned counsel for the respondents, it appears that the second petitioner and the first respondent are the brothers. ~~Services claiming that they are in possession of the~~



property. But, this Court cannot decide the issue relating to the possession of the property at this stage and it is for the Court below to decide who are in possession of the property. However, according to the revision petitioners, they are in possession of the property, based on the unregistered sale deed executed on 18.06.1993. Even assuming that they are in possession up to the date of registered sale deed said to have been executed in favour of the first respondent on 29.06.2012, it appears that 12 years they are in possession. Therefore, the revision petitioners made a counter claim with regard to the adverse possession. To decide about the adverse possession as well as to declare the sale deed executed in favour of the first respondent dated 29.06.2012 as null and void, the original vendor is necessary party and this Court finds that this aspects were not considered by the Court below. At this juncture, it is appropriate to refer the provision of Order 8 Rule 6 (A) (4), which states that "the counter claim shall be treated as a plaint and governed by the rules applicable to plaints".

7.A perusal of the above, it is clear that the counter claim of the revision petitioners has to be considered as a plaint and the defendant can entitle to file a petition to implead. In the present case, the person who needs to be impleaded by the revision petitioners is none other than the vendor for both the revision petitioners as well as the first respondent. This Court finds that the vendor is necessary party to adjudicate the dispute among the parties. Therefore, the order of the Court below is liable to be set aside. Accordingly, the order passed by the Sub Court, Sivagangai in I.A.No.556 of 2016, dated 20.12.2016 is set aside and the Civil Revision Petition is allowed.

8.Since the matter is pending from 2012, this Court directs the Sub Court, Manamadurai to dispose of the suit in O.S.No.258 of 2019, within a period of nine months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge,
Manamadurai.



2.The Subordinate Judge,
Sivagangai.

3.The Tahsildar,
Ilayangudi Nagar,
Ilaiyangudi,
Ilaiyangudi Taluk,
Sivagangai District.

4.The Revenue Divisional Officer,
Office at Majeeth Road,
Sivagangai Town,
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Sivagangai District.

5.The District Collector,
Office at Collectorate Complex,
Sivagangai Town,
Sivagangai Taluk,
Sivagangai District.

+1 CC to M/s.N.TAMILMANI, Advocate (SR-10919[F] dated 09/03/2022)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-11043[F] dated 10/03/2022)

ORDER MADE IN
C.R.P. (PD) (MD) .No.621 of 2017
09.03.2022

RS (21.03.2022) 4P-8C