



Crl. O.P. No.1807/2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on

30.03.2023

Delivered on

28.04.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

A.No.505 of 2015

in C.S.No.502 of 2008

1.K.P.Elumalai (Deceased)

2. G.Kannamal

3. Manga

4. Vidhya

5. Magesh

... Applicants / Third parties

Versus

1. P.Jayaraman

2. J.Anbarasu

3. J.Deenadayalan

4. J.Balachandran

... Respondents / plaintiffs

5. S.Pathipooranammal

6. Kullayi @ Pushpa

7. A.Venkat Roa

8. A.Alamelu

9. Vimala

10. Neeraja

11. Nandini

12. Naveen



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13.AL.Alagappan

14.N.Sahul Hameed

..Respondents/defendants

Application has been filed under Order XIV Rule 8 of O.S.Rules read with Order 6 Rule 17 of CPC to implead the applicants as a third party / defendants 11 and 12 to the suit in C.S. No.502 of 2008 on the file of this Court (Original side).

For Applicants : Mr.Perumbulavil

For Respondents : Mr.Vedavallikumar for R1-R4

Mr. R.Ashraf Khan for R9 to R14

ORDER

The applicants are the third parties and they have filed an application to implead themselves as party to the proceedings in C.S. No.502/2008.

2. The respondents 1-4 / plaintiffs have filed a suit for declaration that the suit property belonged to them and also to declare that the settlement deed dated 03.10.2007 executed by the first defendant in favour of the second defendant in respect of the suit properties and the sale deed dated 31.08.2007 executed by defendants 3-8 through 9th defendant in favour of



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10th defendant as null and void.

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3. The learned counsel for the applicants submitted that the applicants' grand father Kuppu Naicker had Kudivaram right over the suit property; one Palaniappa Chetty had tried to evict the applicants' grandfather and several others by filing a suit in O.S. No.770 to 772 and O.S. No.45 of 2016 and the suits were dismissed; one Venkat Rao and Rajeswara Rao traced their title through the Palaniappa Chetty and they claimed right in the suit schedule property; the applicant's grandfather Kuppu Naicker died in the year 1936 leaving behind his only son Pakkali Naicker to succeed his property; the applicants and their mother are the legal heirs of Pakkali Naicker and after his demise they are in possession and enjoyment of the property; the plaintiffs have got no right over the suit properties; the suit filed by the first respondent in O.S. No.8050/1997 for declaration of the proceedings of the District Collector dated 28.07.1997 as illegal was dismissed and an appeal has been preferred over the said order; since the applicants are residing in the suit property and they have right over the suit properties, they are just necessary parties to the proceedings and hence they should be impleaded as parties to the suit.



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4. The learned counsel for the respondents 1 to 4 / plaintiffs submitted that the affidavit supporting the application has been filed by the first applicant and he had not stated any reason as to why he wanted to implead himself to a party to this proceedings.

4.1 The applicant's grandfather Kuppu Naicker did not have any right in the suit property; one Gopal Naicker had filed a suit in O.S. No.359/1967 and O.S. No.3465/1969 against the third defendant and others and the suits were dismissed on 03.04.1975; in the subsequent suit filed in O.S. No.8050/1997 it is falsely pleaded by the applicants that Gopal Naicker was in possession of the suit property by encroaching the same in the year 1980; it is further stated that Gopal Naicker executed Power of Attorney in his favour and based on the power of attorney the applicants have effected mutation in the revenue records.

4.2 In the proceedings of the Collector dated 28.07.1997 it is held that Gopal Naicker did not have any link with the registered holder of the lands and on that basis the mutations were cancelled on 28.07.1997; the applicants



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have filed a suit against the Collector to declare that the above order is null and void and the said suit was dismissed on 17.08.2007; a person who had failed to establish his right in the earlier litigation had filed this petition just in order to drag the proceedings and cause inconvenience to the parties who are already litigating before the Court; the applicants have made certain defamatory remarks against the respondents and the respondents reserve their right to file a suit for damages; the applicants filed a suit in O.S. No.8050/1997 on the file of XI Assistant City Civil Judge, Chennai and the same was also dismissed; in the written statement filed by the District Collector it has been stated that the applicants were neither the owner nor they were in possession of the suit property; the urban land authorities have the name Perumal Naicker as the registered owner in the Urban Land Tax Records and Perumal Naicker is none other than the father of the first respondent and the grandfathers of respondents 2 to 4; this application is unnecessary and it is liable to be dismissed.

5. The learned counsel for the respondents 9 to 14 submitted that 14th defendant had purchased the suit property by virtue of sale deeds dated 31.08.2007 from the respondents 7 to 13 (defendants 3 to 9); the defendants



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3 to 9 are the original owners of the suit property and it originally belonged to one Durai Swamy Rao who is ancestor of the respondents 7 to 13; he filed a suit in O.S. No.90/1940 to pass a final decree and it was passed on 15.03.1952; subsequent to the Madras Estate Abolition and Conversion into Ryotwari Act, 1948, which came into force in the year 1951, Ayanavaram village was taken over by the Government under Madras Madras Estate Abolition and Conversion into Ryotwari Act, 1948.

5.1 The seventh respondent filed a petition before the Director of Settlement for grant of patta and the same was rejected and the revision filed before Board of Revenue was allowed and confirmed the ownership of Durai Swamy Rao; the respondents 1 to 4 have chosen to file a petition before the Director of Survey and Settlements, Chennai in the year 1996 claiming separate patta in respect of the suit property; after the compromise entered into between the parties before the Settlement Officer in the year 1965 for issuing joint patta in the names of 7th respondent and his brothers and sisters and Perumal Naicker who is the grandfather of respondents 1 to 4, the revenue records in respect of the suit property have been mutated; during that point of time the deceased first applicant had made unauthorised sub-



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division and transfers in respect of the suit schedule property; on the petition filed by the 7th respondent by himself and his brothers and sisters to cancel the sub-division, an enquiry was conducted by the District Collector; the 7th respondent asserted that himself and his brothers and sisters are the land owner of land comprised in T.S.No.66 of Ayanaram Village measuring 24 grounds; thereafter, the District Collector has issued proceedings vide No.J4/68153/96 dated 28.07.1997 and ordered to cancel the transfer and related entries and thereafter the original entries were restored.

5.2. The first applicant had challenged the said order by filing the suit in O.S. No.8050/1997 and the same was dismissed on 17.08.2007; even in that suit there is a reference about the suits in O.S. No.770 to 815 of 1914 and 36 to 49 of 1916 on the file of District Munsif, Poonamallee; the third party applicants have suppressed all such facts and filed this application.

5.3 The applicants have also challenged the order of District Collector, Chennai by way of filing a writ petition in W.P. No.13549/2007 and this Court has directed the applicants to approach the civil Court to institute



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appropriate proceedings and establish title and possession; instead of filing a civil suit to establish their rights, the applicant have filed the suit to declare the proceedings of the Collector as null and void and that came to be dismissed; the applicants have not established their rights in respect of the suit property; the 10th defendant had purchased the suit property from the rightful owners. Without any basis the third party applicants have filed this petition and hence it is liable to be dismissed.

6. The contention of the third party applicants is that they are in lawful possession and enjoyment of the suit property and they derive right over the suit property from their grandfather Kuppu Naicker. In view of the transfers and unauthorised subdivision made in respect of the suit property by the applicants, the 7th respondent had filed a petition before the District Collector, Chennai and the District Collector, Chennai had issued a proceedings in No. J-4/68153/96 dated 28.07.1997 to cancel all those entries and to restore the original entries. In fact the original entries in respect of the parties to the suit have been made consequent to the settlement made before the Settlement Officer in the year 1965. The suit filed by the applicants challenging the proceedings of the District Collector in



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O.S.No.8050/1997 was dismissed and it is submitted by the applicants that an appeal has been preferred challenging the said judgment.

7. Now the dispute is in respect of the suit properties between the plaintiffs and the defendants who do not recognise the proposed parties either as owners or as persons in lawful possession and enjoyment of the same. They have supported the said contention on the basis of the earlier orders passed by the District Collector and the dismissal of the suit filed by the third party applicant themselves. Having failed to get a decree in favour of the applicants, the applicants have sought to implead themselves once again as party to the suit filed by the plaintiffs. If the third parties are really aggrieved they ought to have filed a suit against the respective parties and sought relief. Having chosen to file a suit to declare the proceedings of the District Collector as null and void, the applicants cannot seek themselves to be impleaded as parties to this proceeding and claim any right over the suit property.

8. The petitioners have not stated about the writ petitions filed by them challenging the proceedings of the Collector in which they have been



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directed to approach the Civil Court. The applicants have failed to file any civil suit to ascertain the alleged title or possession. The records produced before the Court would show that the applicants failed in their suit which was filed to challenge the Collector's proceedings and have attempted to take one more advantage by adding themselves as parties in this dispute between the plaintiffs and defendants. The plaintiffs and the defendants cannot be compelled to undergo rigorous trial by exposing themselves to the facts and evidence which have been already dealt in the earlier proceedings initiated by the applicants against them.

9. By allowing the applicants to be impleaded in the suit would not only complicate the proceedings but would pave a way to re-agitate the facts which have been already decided. Since the applicants have opted to file an appeal challenging the judgment passed in O.S. No.8050/1997, they need not claim themselves as essential parties to the dispute between the plaintiffs and defendants. Even in the earlier suit filed by the applicants, the third party applicants have not chosen to seek any relief of declaration against these respondents. But he only sought the relief of declaration with regard to the proceedings of the Collector. So the applicants who have failed to exercise



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their rights by way of filing separate suits against the respondents and allowed it to be barred by limitation, cannot take the advantage of impleading themselves as parties to these proceedings. Since the issues that might arise in the suit can be decided effectively without the presence of these third party applicants, I feel the applicants are not necessary parties to the proceedings.

10. In view of the above stated reasons, this application is dismissed.

28.04.2023

Index: Yes

Speaking order

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R.N.MANJULA, J.,

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