



C.R.P.No.3438 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on : 15..11..2024

Orders Pronounced on : 02..12..2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition No.3438 of 2014

and

M.P.No.1 of 2014

1.G.V.Kamalammal

2.Dr.Varadharajulu @ Sekar

..... Petitioners

-Versus-

1.C.Kamalakannan

2.Dharmarayapillai Thanner Pandal

Rep. by its Trustees,
having their office at
No.21, Thandavarayan Street,
East Gopalapuram,
Royapettah, Madras 600 014.

3.C.K.Jayaraman (Since Deceased)

4.A.L.S.Kannappan (Deceased)

5.C.V.Manjula (Deceased)

6.G.V.Geetha

7.Smt.Jayanthi Kannappan

8.Smt.Lavanya

9.Mrs.Yamini

1 of 15



C.R.P.No.3438 of 2014

10.Ishwarya

11.Minor Sathappa Srinivasan

Rep. by is Mother and Natural Guardian, Mrs.Jayanthi Kannappan

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.07.2014 passed in I.A.No.109 of 2012 in O.S.No.13660 of 2010 by the learned XIX Additional Judge, City Civil Court, Chennai.

*For Petitioner(s) : Mr.K.Ravi,
Senior Counsel
Assisted by Mr.R.Murugan for
M/s.Rugan and Arya*

*For Respondent(s) : Mr.Sam Jayaraj Houston for
M/s.Sarvabhauman Associates
for R1*

*Mr.P.Anandan
for M/s.Majestic Law Firm for
R7 to R11*

RR3, 4 and 5 died

R6 – Unserved

R2 – No appearance



C.R.P.No.3438 of 2014

ORDER

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This civil revision petition has been filed by the plaintiffs challenging the order passed by the learned XIX Additional Judge, City Civil Court, Chennai, dated 15.07.2014, allowing the application in I.A.No.109 of 2012 in O.S.No.13660 of 2010 filed by a third party, C-Kamalakannan, the 1st respondent herein under Order I, Rule 10(2) of CPC, seeking to implead himself as a party defendant in the suit.

2. The suit in O.S.NO.13660 of 2010 has been filed by the revision petitioners/plaintiffs for a declaration of title in respect of the suit B to E Schedule properties and for a consequential relief of permanent injunction originally as against the respondents 2 to 6. Later on the legal heirs of the deceased defendants have been brought on record as party defendants.

3. The revision petitioners pleaded that the suit A-Schedule mentioned property originally belonged to one Venkataraman Chetty, who purchased it through a registered sale deed dated 09.03.1790. Thereafter, according to the revision petitioners, the said property was developed by the legal representatives of Gandavadi Venkatesan, and there was a Will executed by one of the sons of Gandavadi Venkata Varadarajulu Chetty on 20.02.1931. The testator died on 30.03.1931. The said Will was sought to be probated and it was accordingly probated by this court by order dated 26.08.1931 in O.P.No.174 of

3 of 15



C.R.P.No.3438 of 2014

1931. Thereafter, the legal representatives of Gandavadi Venkata Varadarajulu Chetty namely, Gandavadi Mangamma and her adopted son, on the death of Gandavadi Venkata Varadarajulu Chetty, partitioned the said property between themselves. As per the said Will, Venkatesan Chetty was in absolute possession and enjoyment of the property. Therefore, Venkatesan Chetty's adopted son had become the absolute owner of the property as per the Will. His son filed a suit in C.S.No.107 of 1952. The said suit was decreed in respect of Item Nos.3, 4, 6 of the suit schedule mentioned properties in C.S.No.107 of 1952 by judgement dated 05.10.1955. The plaintiff therein had been in absolute possession and enjoyment of the A-Schedule property and continued to be so, and prior to them, their ancestors had been in absolute possession and enjoyment of the same. Even in the settlement proceedings, the right of the plaintiffs had been upheld. A portion of the A schedule property was settled in favour of the defendants 4 and 5. The total area of the said property is 5 Acres and 8 Cents. An extent of about 8 grounds of land had been acquired under the Land Acquisition Act for the Corporation of Chennai for the purpose of setting up a pumping station. Around 2 grounds and 99 square feet of land had been sold under an order of the court. Now, only 80 grounds of land are available as per patta which are the suit properties and for 70 grounds and 0915 square feet of land, the patta stands in the joint name of the plaintiffs 1 and 2 and for another 4



C.R.P.No.3438 of 2014

grounds and 0883 square feet of land, the patta stands in the name of the 2nd plaintiff, as the 2nd plaintiff got the same under a registered release deed dated 20.04.1971. Hence, claiming right over the properties suit has been filed for declaration of title and for consequential injunction.

4. A written statement was filed by the defendants. At that stage, the application for impleadment was filed by the 1st respondent - C.Kamalakkannan, a third party to the suit seeking to implead himself as a party defendant. According to him, he is a social worker. A property measuring an extent of 5 Acres and 8 Cents of land in Old S.No.66, Re-Survey No.5, T.S.No.76 to 87 in Ayanavaram village, belonged to one A.L.N.Vellayappa Chettiar he having purchased it in a court auction sale in E.P.No.38 of 1914. After his demise, the said property devolved upon his son AL.V.Lakshmanan Chettiar and after his death his only son L.Kannappan Chettiar took possession and he enjoyed the same as the absolute owner. Subsequently, a portion of the said land was acquired by the State Government for Corporation of Chennai to set up a pumping station. That acquisition proceedings were challenged by L.Kannappan Chettiar in L.A.O.P.Nos.84 of 1968 and 46 of 1972 wherein, the compensation for the acquired land was ordered to be paid to L.Kannappan Chettiar by order dated 03.11.1994 by the City Civil Court at Chennai. Thereafter, another acquisition proceeding was initiated for acquisition of land



C.R.P.No.3438 of 2014

for Tamil Nadu Housing Board, which was challenged by the 1st respondent as Power Agent of the said L.Kannappan Chettiar. The said L.Kannappan Chettiar created a Trust – Dharmarayapillai Thanneer Pandal and Kannappan Chettiar Charitable Trust by trust deed dated 08.07.1992. According to the 1st respondent, besides the Power of Attorney Holder of L.Kannappan Chettiar, he is the Managing Trustee of the Trust and one Ravichandran and Amudha are trustees. According to the 1st respondent, the suit has been filed to grab the suit properties and hence, his presence in the suit is absolutely necessary for proper adjudication and hence the impleadment application.

5. The said impleadment application was opposed by the plaintiffs, contending that the 1st respondent is a third party and he is no way connected with their family and the application came to be filed with the false allegations. The trial court, however, allowed the impleadment application.

6. This court has heard Mr.K.Ravi, learned senior counsel for the petitioners and Mr.Sam Jayaraj Houston, learned counsel appearing for the 1st respondent and Mr.P.Anandan, learned counsel appearing for the respondents 7 to 11.

7. The learned counsel for the revision petitioners would mainly submit



C.R.P.No.3438 of 2014

that the 1st respondent/impleading petitioner is a third party to the lis and he is no way connected to the subject properties, and only in order to grab the suit schedule mentioned properties, the 1st respondent filed an application to implead him in the suit claiming to be the Power of Attorney Holder of L.Kannappan Chettiar and claiming right under the Trust said to be created by L.Kannappan Chettiar.

8. The learned counsel for the revision petitioners would further contend that, in the affidavit filed in support of the impleadment application, it is stated as if L.Kannappan Chettiar was permitted to receive the compensation amount in the land acquisition proceedings and it is also stated that L.Kannappan Chettiar had created a Trust by way of a trust deed dated 08.07.1992. The above allegations are nothing but a clear case of falsehood. The said L.Kannappan Chettiar he is no way connected to the family of the revision petitioners. It was only A.L.S.Kannappan Chettiar who had a connection to the family of the revision petitioners, however taking advantage of the similarity in the name, an application for impleadment came to be filed. At any rate, the Power of Attorney originally executed by Kannappan Chettiar was revoked and therefore, based on so-called Power of Attorney, the 1st respondent cannot espouse the cause of A.L.S.Kannappan Chettiar. The land acquisition proceedings would by itself show that no amount was ordered to be paid to A.L.S.Kannappan Chettiar.



C.R.P.No.3438 of 2014

In fact, the appeal was also not proceeded by A.L.S.Kannappan Chettiar. Per contra, a false pleading was made in the affidavit.

9. The learned senior counsel for the revision petitioners would further add that, in the year 1992, a Trust is said to have been created by one A.L.S.Kannappan Chettiar son of Lakshmanan Chettiar in the name of Dharmarayapillai Thanneer Pandal and Kannappan Chettiar Charitable Trust for various charitable purposes by trust deed dated 08.07.1992, and this trust deed was created only to grab the suit schedule mentioned properties, and there was no charitable Trust existing, and the same was purportedly created in order to grab the properties by one L.Kannappan Chettiar @ A.L.L.Kannappan Chettiar. Whereas the earlier proceedings would clearly indicate that only A.L.S.Kannappan was available. Therefore, all these facts would clearly show that the impleadment application was filed only to create encumbrance over the properties. The impleading petitioner is in no way connected to the family, and Dharmarayapillai Thanneer Pandal Inam Trust has been in existence for a long period. Therefore, the learned counsel would contend that the impugned order cannot be sustained in the eye of law. It is for the plaintiff to choose against whom a decree is to be obtained.

10. Per contra, the learned counsel appearing for the 1st respondent would contend that the 1st respondent is not only the Power of Attorney Holder



C.R.P.No.3438 of 2014

of AL.L.Kannappan Chettiar but also the Managing Trustee of the Trust created in the year 1992 by Kannappan Chettiar @ AL.L.Kannappan Chettiar. In order to protect the trust properties, the impleadment of the 1st respondent was necessary, and therefore, he filed an application to get impleaded himself in the suit as a party defendant. The court below considered the same and rightly allowed the application, and no infirmity could be attached to the order of the court below. Hence, he prayed for dismissal of the revision petition.

11. The learned counsel for the respondents 7 to 11/defendants 5 to 9 would contend that the suit properties originally belonged to one Vellayappa Chettiar having purchased it in a court auction; as per the District Collector's proceedings, the suit property is the absolute property of Dharamarayapillai Thanneer Pandal Inam Trust; one AL.S.Kanappan was the Managing Trustee of the Trust and after his death, 5th defendant has become the Managing Trustee of the Trust; in the land acquisition proceedings the suit properties were declared to be absolute property of A.L.S.Kannappan and even though L.Kannappan had claimed right over the compensation amount, no order was passed in his favour; the said L.Kannappan attempted to impersonate; and Dharamarayapillai Thanneer Pandal Inam Trust was created only in order to grab the suit properties; and the said L.Kannappan is in no way connected with the property.



C.R.P.No.3438 of 2014

12. I have considered the rival submissions and perused the entire materials carefully.

13. The suit has been filed for declaration of title in favour of the plaintiff in respect of suit B to E Schedule Properties and for consequential injunction restraining the defendants, their agents, servants, men, and everyone claiming under them and acting on their behalf from in any way interfering with the plaintiff's peaceful possession and enjoyment of the plaint B to E Schedule properties in any manner whatsoever.

14. The relationship with the family has been clearly pleaded in the plaint. From a reading of the entire pleading, it appears that one AL.S.Kannappan Chettiar (since deceased) was arrayed as 3rd defendant in the original suit. The 1st respondent filed an application to implead himself in the suit as a party defendant. In the impleading application, the 1st respondent pleaded that L.Kannappan Chettiar is the son of AL.V.Lakshmanan Chettiar. According to him, the compensation amount was awarded in favour of L.Kannappan Chettiar in the land acquisition proceedings in L.A.O.P.No.84 of 1969 and L.A.O.P.No.46 of 1971 by the learned VI Assistant Judge, City Civil Court, Chennai, by order dated 03.11.1994. Besides the said L.Kannappan Chettiar also created a trust in the year 1992 where the 1st respondent is the Managing Trustee.



C.R.P.No.3438 of 2014

15. On a careful perusal of the averments made in the impleading application, this court is of the view that those allegations were pressed into service only for the purpose of filing the application for impleadment. This court has gone through the orders in the reference against land acquisition proceedings initiated before the City Civil Court, wherein it had been clearly recorded that one AL.S.Kannappan had not prosecuted his right in the reference against the land acquisition proceedings. This was recorded in the above land acquisition proceedings in page 25 of the order dated 03.11.1994 and the appeal filed by the said A.L.Kannappan was not prosecuted. Therefore, it was dismissed. Therefore, the compensation amount was not awarded in favour of AL.S.Kannappan and in the land acquisition proceeding, it was held that the subject survey number belonged to Dharmarayapillai Thanneer Pandal Inam Trust.

16. It is to be noted that originally the land acquisition proceedings commenced in the year 1966 and thereafter, the references in L.A.O.P.No.84 of 1969 and L.A.O.P.No.46 of 1971 were made to the civil court. The above proceedings would make it clear that one Dharmarayapillai Thanneer Pandal Charity originally existed and it was managed by heads of the village, as could be seen from the findings recorded in the land acquisition proceedings. Therefore, the affidavit filed in support of the impleading application to the



C.R.P.No.3438 of 2014

effect that the trust was created in 1992 in the name of Dharamaraja Pillai

Thanneer Pandal and Kannappan Chettiar Charitable Trust was raised for the first time is nothing but a clear suppression of material fact. Though the said trust was created in the year 1992 by one AL.L.Kannappan Chettiar Son of Lakshmanan Chettiar, the fact remains that it was A.L.S.Kannappan Chettiar who agitated the land acquisition proceedings and not AL.L.Kannappan Chettiar. Therefore, this court is *prima facie* of the view that, taking advantage of the similarity in the names, the trust was created in 1992 whereas the land acquisition proceedings would clearly show that Dharmarayapillai Thanneer Pandal Inam Trust was very much in existence even before the land acquisition proceedings were initiated in 1969. Therefore, when the application for impleadment was filed with false allegations by the 1st respondent as the Power of Attorney Holder, and the so-called Power of Attorney was cancelled by the executant himself subsequently on 19.07.2000, merely on the basis of the trust created by a person named AL.L.Kannappan Chettiar, now the 1st respondent cannot contend that he has rights in the properties. If at all the 1st respondent has any right on the basis of the trust deed to protect the properties of the trust, being the Managing Trustee, it is for him to file a separate suit and not in the present suit by making averments that are totally contrary to the facts already recorded in the earlier proceedings.



C.R.P.No.3438 of 2014

17. In such view of the matter, the 1st respondent, being a third party to the suit proceedings, cannot, as a matter of right, seek to implead himself based on certain documents created later. The civil revision petitioners/plaintiffs being *dominus litis* could choose against whom the relief is to be sought. Such being the position the 1st respondent, who is a third party, cannot seek to implead. It is also to be noted that one A.L.S.Kannppan Chettiar was already arrayed as a party defendant in the suit, and he is no more. The trust was also made as a party defendant. The interest of the trust and the rights of the parties would be decided in the pending suit. Therefore, the 1st respondent/third party who has set up his claim based on the subsequent document created by some other person, who was not connected in any way to the revision petitioners' family cannot seek to implead him in the suit proceedings.

18. It is also to be noted that 3rd defendant in the suit, who was party in the earlier land acquisition proceedings, has not pleaded in his written statement about the creation of further trust in the year 1992. Whereas the existence of Dharmarayapillai Thanneer Pandal Inam Trust was admitted by him. In such view of the matter, this court is of the view that the impleading application is not maintainable, and therefore, the order of the court below is liable to be set aside.



C.R.P.No.3438 of 2014

In the result, the revision petition is allowed and the order dated 15.07.2014 made in I.A.No.109 of 2012 in O.S.No.13660 of 2010 by the learned XIX Additional Judge, City Civil Court, Chennai, is set aside. No costs. Connected MP is closed.

Index : yes / no
Neutral Citation : yes / no
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02..12..2024

To

1. The XIX Additional Judge, City Civil Court, Chennai.



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C.R.P.No.3438 of 2014

N.SATHISH KUMAR.J.,
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Pre Delivery Order
in
C.R.P.No.3438 of 2014

02..12..2024