



C.R.P.(MD).No.933 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.07.2024

DELIVERED ON: 19.08.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No. 933 of 2019

and

CMP(MD).No.5331 of 2019

M.James

...Petitioner/Petitioner/Nil

Vs

1.Sulochana Amma alias Sarada Amma

2.Karthiyayani Pillai alias Sumuki Amma

3.Church of South India Trust Association

Represented bishop of Kanyakumari

Diocese Rev.G.Christudhas

...Respondents 1 to 3

/Respondents 1 to 3

/Plaintiffs 1 to 3

Gnanendri (died)

4.Manas

Yesuvadiyan (died)

5.Samji



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Appavu Nadar(died)

Kochupillai (died)

6.Gnanammal

Krishnan Nair (died)

7.Sulochana

Madhavan Nair (died)

Kaliyamma Pillai (died)

8.Janaki Bai

Krishnan (died)

Raman Nadar (died)

Sivasankara Pillai (died)

9.Nagamma Pillai

10.Bhagavathi Amma

11.Babu Nadar

12.Kaliamma

Valsalam (died)

13.Muthayyan

Neelamma Pillai (died)

14.Sreedharan Nair



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15.Thankappan

16.Sarasa Bai

17.Ponnayyan Nadar

18.Rajam

Chellan Nadar (died)

19.Rajamma Nadathi

20.Valsala

21.Thankayyan Nadar

22.Thankamma

23.Kolappan Nadar

Palamma Nadathi (died)

Kuttan Nadar (died)

24.Sarojam

N.Parameswaran Pillai (died)

K.Lalitha Bai (died)

N.Velu Pillai (died)

N.Bhaskara Pillai (died)

Krishna Pillai (died)



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Kanakamma (died)

25.Lizzy

26.Daisy

27.Renjitham

M.Balakrishna Pillai (died)

28.Sathiya Bhama

29.Thankayyan

30.Kochu Kunju

31.Chithirai alias Ponnumuthu

32.K.Thankappan

33.Ananthapalpu

Rajamma (died)

34.Vasanth

35.C.Valsala

36.C.Sasi

37.Raju

38.Emili

Dhasan (died)

39.Raju

4/15



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Sathianesan (died)

Selvanayagam (died)

40.Chellammal

41.Sivanantharaj

42.Daniel

43.Sanantharaj

44.Dharmaraj

45.Thiagaraj

Dani Bai (died)

46.Javala Bai

47.Appukuttan

48.Nalina Kumari

49.Arulchandran

50.Madhavan Nair

51.Ramachandran Nair

52.Prasanna Kumari

53.Jalaja Kumari

....Respondents/Respondents
/Defendants



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PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow the civil revision petition and set aside the decretal order dated 17.12.2018 in I.A.No.60 of 2018 in I.A.No.141 of 2011 in O.S.No.653 of 1978 on the file of the II Additional District Munsif Court, Kuzhithurai.

For Petitioner : Mr.V.M.Balamohanthambi

For R1 : No appearance

R2 : died

For R3 : Mr.H.Thayumanaswamy

For R4 to R53 : Dispensed with

ORDER

The present civil revision petition has been filed by a third party to O.S.No.653 of 1978 on the file of the Additional District Munsif Court, Kuzhithurai challenging an order passed by the said Court rejecting an application to implead the revision petitioner in the final decree proceedings.

(A)Factual Matrix:

2.The respondents 1 and 2 herein have filed O.S.No.653 of 1978 on the file of the II Additional District Munsif Court, Kuzhithurai for the



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relief of declaration that the decree in O.S.No.482 of 1970 dated 30.06.1976 on the file of the District Munsif Court, kuzhithurai in favour of the defendants 3 and 4 as invalid and not binding upon the plaintiffs and their 1/8th share in 'A' schedule property. The plaintiffs have prayed for a consequential injunction restraining the decree holders from proceeding with the final decree proceedings and in the event of final decree proceedings being passed, restrain the defendants 3 and 4 from executing the decree in O.S.No.482 of 1970.

3.In the said suit, one Gnanendri was arrayed as the first defendant and her son P.Valsalam was shown as 20th defendant. The said suit was decreed on 23.12.1996 granting a preliminary decree in favour of the plaintiffs with regard to their 1/8th share in 'A' schedule property. In paragraph No.14 of the said judgement, the trial Court has specifically found that the judgment and decree in O.S.No.482 of 1970 on the file of the District Munsif Court, Kuzhithurai dated 30.06.1976 has been obtained by fraud.



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4.Challenging the said judgment and decree in O.S.No.653 of 1978, an appeal was filed by some of the defendants in A.S.No.75 of 1997 before the Sub Court, Kuzhithurai and the same has been dismissed on 20.09.2002. The said judgment and decree of the First Appellate Court has attained finality. Based upon the preliminary decree passed in O.S.No.653 of 1978, I.A.No.141 of 2011 was filed by the plaintiffs for passing a final decree. While the said application was pending, the present I.A.No.60 of 2018 has been filed by a third party under Order 1 Rule 10 C.P.C seeking to implead himself as 78th respondent in the final decree proceedings. This application has been dismissed. Challenging the same, the present civil revision petition has been filed.

(B) Contentions of the counsels:

5.According to the learned counsel appearing for the revision petitioner, in O.S.No.482 of 1970 decree which was passed on 30th June 1976, shares were allotted to his vendor namely Gnanendri and her son P.Valsalam. Based upon the said preliminary decree, a final decree was passed on 24.01.1991. On the same date, the 14th defendant in the said suit in whose favour the property was allotted had executed a sale deed in favour of the proposed party for an extent of 48 cents in 'A' schedule



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property. The plaintiffs in the said suit had filed E.P.No.124 of 1991 for taking delivery and delivery was taken by her vendor Gnanendri (14th defendant in the said suit) on 20.09.1991.

6.The learned counsel for the revision petitioner had further submitted that though Gnanendri was impleaded as one of the parties in O.S.No.653 of 1978, she had passed away on 19.03.1993. Without impleading her legal heirs, a preliminary decree came to be passed on 03.01.1997 and therefore, the said decree is not valid in the eye of law. The petitioner had further submitted that he had filed O.S.No.193 of 1997 challenging the judgment and decree dated 23.12.1996 in O.S.No.653 of 1978 as null and void. The said suit was dismissed on 10.09.2014 granting liberty to the proposed party to workout his remedy in I.A.No.141 of 2011 i.e. a final decree proceedings in O.S.No.653 of 1978. He had further contended that challenging the judgment and decree in O.S.No.193 of 1997, he had filed A.S.No.39 of 2015 and the same is pending before the Sub Court, Kuzhithurai. Therefore, according to the petitioner when he had purchased the property, based upon a final decree in O.S.No.482 of 1970 and possession has already been taken pursuant to the said decree, he



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is a necessary party to the final decree proceedings in the present suit. The preliminary decree passed in O.S.No.653 of 1978 is null and void, in view of the fact that the decree has been passed as against a dead person without impleading the legal heirs of Gnanendri.

7.Per contra, the learned counsel for the respondents had contended that though the petitioner's vendor Gnanendri was arrayed as the first defendant in O.S.No.653 of 1978, she had chosen to remain exparte. The trial Court has specifically found that Gnanendri has no right over Survey No.78/2. A sale deed in favour of the proposed party reflects that the proposed parties' vendor traces her title only through the final decree in O.S.No.482 of 1970. The judgment and decree in O.S.No.482 of 1970 has already been held to be not binding upon the plaintiffs in the decree in O.S.No.653 of 1978. Therefore, the proposed party cannot trace his title based upon the judgment and decree in O.S.No.482 of 1970.

8.The learned counsel for the respondents had further contended that the independent suit filed by the proposed party in O.S.No.193 of 1997 has been dismissed and an appeal filed by the proposed party is



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pending in A.S.No.39 of 2015 and therefore, he has to be worked out his remedy only in the said appeal. Any sympathy shown to the revision petitioner to get himself impleaded in the final decree proceedings would only result in dragging the proceedings. Hence, he prayed for dismissal of the revision petition.

9.I have carefully considered the submissions made on either side and perused the material records.

(C) Discussion:

10.A perusal of the affidavit filed in the impleading application in I.A.No.60 of 2018 reveals that the proposed party claims title through a sale deed dated 24.01.1991 said to have been executed by Gnanendri. On the said date, the suit in O.S.No.653 of 1978 was pending. Therefore, it is clear that the proposed party is a pendente lite purchaser from the first defendant in O.S.No.653 of 1978.

11.The only ground on which the impleading application has been filed is that the decree in O.S.No.653 of 1978 is not valid in the eye of law, in view of non-impleading of the legal heirs of the deceased first



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defendant Gnanendri. Only based upon the said fact, the revision petitioner has filed O.S.No.193 of 1997 before the Principal District Munsif Court, Kuzhithurai and the same has been dismissed on 10.09.2014. The appeal filed by the revision petitioner herein in A.S.No.39 of 2015 is pending before the Sub Court, Kuzhithurai. In case, if the preliminary decree in O.S.No.653 of 1978 is declared as null and void, the question of impleading the revision petitioner in the final decree proceeding arising out of O.S.No.653 of 1978 would not arise.

12.The revision petitioner claims title only through the final decree proceedings in O.S.No.482 of 1970. The said decree has been held to be not binding upon the plaintiffs with regard to their 1/8th share in O.S.No.653 of 1978. Therefore, if the Appellate Court decides that the decree in O.S.No.653 of 1978 is valid, even then the revision petitioner will lose his title. Therefore, the question of impleading the revision petitioner in the final decree proceedings in O.S.No.653 of 1978 does not arise.

(D) Conclusion:

13. Viewed from any angle, the revision petitioner can never be considered to be a proper or necessary party in the final decree



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proceedings arising out of O.S.No.653 of 1978. In such circumstances, there are no merits in the revision petition and the same stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

19 .08.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Subordinate Judge
Kuzhithurai
2. The II Additional District Munsif,
Kuzhithurai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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