

(2012) 11 MAD CK 0051

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1731 of 2012 and M.P. (MD) No. 1 of 2012

K. Vinayagam alias Raja

APPELLANT

Vs

Chellammal and Others

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : (2012) 11 MAD CK 0051

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; K. Gokul for R.1 to R.4 and Mr. R. Murugan for R.5, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G. Rajasuria

1. This Civil Revision Petition has been filed to get set aside the fair and decreetal order dated 22.06.2011 passed in I.A.No. 50 of 2011 in

O.S.No. 136 of 2010 on the file of the learned District Judge, Kanniyakumari in Nagercoil. Compendiously and concisely, the relevant facts

absolutely necessary and germane for the disposal of this Civil Revision Petition, would run thus:

(i) The respondents 1 to 4 herein filed the suit in O.S.No. 136 of 2010 seeking the following reliefs, citing the revision petitioner as sole defendant:

(A) For partition and separate possession of plaintiffs' 4/5 share over the plaint scheduled property and metes and bounds.

(B) For a permanent injunction restraining the defendant from causing any alteration, alienation, encumbrance etc., over the plaint scheduled

property till the effect of partition.

(ii) Before commencement of the trial, the plaintiffs did choose to file I.A.No. 50 of 2011 so as to implead their mother - the fifth respondent

herein, as the second defendant, whereupon after hearing both sides and also the proposed party, the trial Court allowed the said application.

2. Being aggrieved by and dissatisfied with the same, this Civil Revision Petition is focussed on various grounds.

3. The learned Counsel for the revision petitioner would implore and entreat the cri de coeur of his client, the warp and woof of the same, would

run thus:

The lower Court should not have allowed the said application and thereby, enabling the plaintiffs to implead the octogenarian who is having nothing

to do with the suit. Already the proposed party executed a settlement deed and thereafter, she revoked it and executed the sale deed in favour of

her son. In such a case, if her evidence was sought to be taken, then the Advocate Commissioner could have been appointed for examining her.

Instead of doing the same as eo nomine party, the plaintiffs sought to implead her as the second defendant which the lower Court should have

rejected it.

4. The point for consideration is as to whether there is any perversity in the order passed by the lower Court in allowing the proposed party to be

added as the second defendant in the facts and circumstances of the case?

The Point:

5. Indubitably and indisputably, unarguably and unassailably, the trial did not commence and even before that, the plaintiffs thought fit to implead

the second defendant. In fact, in my opinion, at the time of filing the suit itself, she ought to have been arrayed as the second defendant because her

acts constituted the core, but she was not added as one of the defendants. Now then, by way of rectifying the mistake crept in the plaint, the

plaintiffs did choose to file such an application. There is no question of limitation also arising in impleading her. In such a case, the lower Court

appropriately exercised its discretion as laid down in the decision of the Honourable Apex Court in Vidyabai and Others Vs. Padmalatha and

Another, . As such, I am of the considered view that no interference in revision is warranted. The point is answered accordingly.

6. In the result, this Civil Revision Petition is dismissed. Consequently, the

connected Miscellaneous Petition is dismissed. No costs. On hearing the order pronounced, the learned Counsel for the respondents 1 to 4/plaintiffs would make an extempore submission that suitable direction might be given to the lower Court to dispose of the suit within a time frame. I am of the view that the lower Court could be mandated to dispose of the suit in O.S.No. 136 of 2010 within a period of four months from the date of receipt of a copy of this order.