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Court : Chennai Madurai

Decided On : Sep-27-2016

Judge : D. Krishnakumar

Appeal No. : C.R.P.(MD)No. 524 of 2016 & C.M.P.(MD)No. 2235 of 2016

Appellant : Muthukumar and

Respondent : Arulmighu Naganathasamy Devasthanam and Others

Judgement :

(Prayer: Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.11.2015 passed in I.A.No.199 of 2015 in O.S.No.63 of 2013 on the file of the learned Principal Subordinate Judge, Kumbakonam.)

1. This Civil Revision petition arises out of the order passed by the learned Principal Subordinate Judge, Kumbakonam, in I.A.No.199 of 2015 in O.S.No.63 of 2013, dated 25.11.2015.
2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the records.
3. According to the Revision petitioner, the first respondent herein filed the suit in O.S.No.63 of 2013 before the Subordinate Court seeking to declare the sale deed dated 27.07.1997 executed by Ramachandra Mudaliar and others in favour of

Shahul Hameed as null and void and consequential relief of permanent injunction restraining the defendants in the suit from removing the logs of trees kept in the suit property as well as for mandatory injunction to deposit a sum of Rs.1 Lakhs being the value of the removed logs from the suit property.

4. While Pending the above said suit, the first respondent Devasthanam filed the I.A.No.199 of 2015 to implead the 4th respondent herein as one of the defendant in the suit as the 4th respondent is the legal representatives of the first defendant who died pending the suit. In the affidavit filed in support of the application, it is alleged that the first defendant deceased Soundararajan became the Trustee of the specific Kattalai after the death of Ramachandra Mudaliar as per document dated 12.11.1952 and the said first defendant died prior to two months, leaving behind three sons. It is further alleged that after the death of the aforesaid deceased, the fourth petitioner being the eldest son has to be impleaded as one of the defendant and hence the first respondent herein has filed the aforesaid application.

5. Further, the Revision petitioner herein filed the detailed counter before the Trial Court submitting that there are no recitals or terms in the partition deed stating that the fourth petitioner, Suresh, alone is shown as a proposed defendant in the suit and they have not shown the other legal heirs of Soundararajan in the above impleading petitions. The Trial Court, before adverting the objection raised in the counter, allowed the application filed by the first respondent. Therefore, the Revision petition has been filed before this Court.

6. Per contra, the first respondent/plaintiff strongly objected that the Trial Court has rightly allowed the petition filed by the first respondent/plaintiff. The first respondent/plaintiff filed the suit for declaration and permanent injunction and mandatory injunction against the defendants. As per the partition deed, 4th petitioner, namely, Suresh, is one of the eldest member of the deceased first defendant family, as he was managing the Trust. Therefore, the first respondent/plaintiff has filed the aforesaid application to implead the said person as per the partition deed. Therefore, the impugned order passed by the Trial Court is perfectly valid and there is no warrant of interference by this Court.

7. The first respondent herein filed the suit in O.S.No.63 of 2013 before the Principal Subordinate Court, Kumbakonam for declaration and permanent injunction and mandatory injunction against the defendants. While the above suit is pending, the first defendant Soundararajan died. Hence, the first respondent filed the application in I.A.No.199 of 2015 to implead the fourth petitioner herein as one of the defendant in the suit.

8. The Revision petitioner has filed the objection stating that first defendant deceased Soundararajan have other legal heirs and therefore, they are also necessary parties in the aforesaid suit. Without adverting the objections made by the petitioner, the Trial Court allowed the application.

9. On perusal of the records, it seems that the first respondent/plaintiff filed the application on the basis of the partition deed to implead the fourth petitioner, as a proposed defendant in the suit. Even though there are other legal heirs for the deceased Soundararajan, they are not the necessary parties, so far as the prayer in the suit is concerned. There is no legal bar for the aforesaid legal heirs of the deceased Soundararajan to be impleaded as a party in the suit. Therefore, this order will not stand in the way of the other legal heirs of the deceased Soundararajan to implead themselves as parties to the suit.

10. Therefore, the objection of the Revision petitioner in the above said application is that the other legal heirs of the deceased Soundararajan are the necessary parties, the Trial Court has rightly allowed the application to implead Suresh as 8th defendant in the suit.

11. Therefore, I am of the view that there is no warrant of interference by this Court. However, the objection of the Revision petitioner is that the other legal heirs of the deceased Soundararajan are also the necessary parties in the suit. If the said application is filed by the other legal heirs of the deceased Soundararajan, the same shall be considered in accordance with law, without influence of the observations made by this Court or by the Trial Court, at the time of considering the application.

12. In view of the facts and circumstances of the case, the Civil Revision petition fails and accordingly the same is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

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