

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2015

Delivered on : 25.11.2015

CORAM

THE HONOURABLE MR. JUSTICE **K.K.SASIDHARAN**

C.R.P.(PD)No.2655 of 2015 and
M.P.Nos.1 and 2 of 2015

Ramesh

... Petitioner

vs.

1.K.V.Sathyanarayanan

2.Sekar

3.Murugan

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.10.2014 passed in I.A.No.478 of 2014 in O.S.No.234 of 2014 by the Hon'ble I Additional District Munsif, Pondicherry and praying to set aside the same.

For Petitioner : Mr.P.Sivamani

For Respondents : Mr.K.V.Subramaniam, Senior Counsel
for Mr.A.S.Narasimhan for R1
No appearance for R2 and R3

ORDER

This Civil Revision Petition is directed against the order dated 27.10.2014 in I.A.No.478 of 2014, whereby and where under, the learned First Additional District Munsif, Puducherry dismissed the application filed by the petitioner to implead him as a party to the suit in O.S.No.234 of 2014.

SUMMARY OF FACTS:-

2. The first respondent in his capacity as an agreement holder filed a suit for injunction against respondents 2 and 3 before the Principal District Munsif Court at Puducherry. The suit was taken on file in O.S.No.234 of 2014.

3. The petitioner filed an interlocutory application in O.S.No.234 of 2014 to implead him as a party, primarily on the ground that the first respondent has no right, title, interest or possession in respect of the suit schedule property.

4. The application was opposed by the first respondent by filing counter. According to the first respondent, he has entered into a Sale Agreement on 16.12.2013 with Mr.Chandran, who is stated to be the lawful owner of the suit schedule property. The first respondent contended that respondents 2 and 3 trespassed into the property and threatened to dispossess him. According to the first respondent, the petitioner is neither a necessary nor a property party for deciding the suit for injunction.

5. The learned First Additional District Munsif, Puducherry considered the application filed by the petitioner in the light of the counter affidavit filed by the first respondent. According to the learned Trial Judge, the suit is only

for injunction and as such, the question raised by the petitioner with respect to title cannot be adjudicated. The learned Trial Judge concluded that the petitioner is not a necessary party for an effective adjudication of the suit in question. Feeling aggrieved by the said order, the unsuccessful petitioner in I.A.No.478 of 2014 is before this Court.

SUBMISSIONS BY PARTIES

6. The learned counsel for the petitioner contended that the first respondent invented an artificial cause of action to file a collusive suit impleading respondents 2 and 3 as parties. According to the learned counsel, the suit schedule property absolutely belongs to the petitioner. The first respondent obtained a sale agreement to grab the property owned by the petitioner and thereafter filed the suit in question. The learned counsel contended that the whereabouts of respondents 2 and 3 are not known and even notices sent to them were unserved with an endorsement that "No such persons", meaning thereby, the suit was filed in the name of fictitious persons. According to the learned counsel, the petitioner, being the title holder of the property and the person in possession has got a right to implead in a suit filed by a third party in respect of his property.

7. The learned Senior Counsel for the first respondent justified the order passed by the learned Trial Judge. According to the learned Senior

Counsel, the petitioner wanted to convert the suit for injunction into a title suit. The application was therefore rightly dismissed by the Trial Judge.

ANALYSIS

8. The first respondent filed a suit in O.S.No.234 of 2014 before the First Additional District Munsif, Puducherry. The suit was filed on the basis of a sale agreement dated 16.12.2013. The vendor was not a party to the suit. During the course of hearing, the learned Senior Counsel for the first respondent submitted that Mr.Chandran, who executed the sale agreement in favour of the first respondent has already been impleaded as a party to the suit.

9. The petitioner has taken up a contention that the first respondent filed the suit in question by impleading two fictitious persons as defendants with a view to obtain a collusive decree.

10. It is not as if the Trial Court is bound to grant a decree in case the defendants are called absent. Even if the defendants are set ex parte, still, the Court has to consider as to whether the first respondent is in possession of the suit schedule property. The Court should also consider as to whether the vendor of the first respondent was having right to convey the suit property to him by way of a sale agreement. Since the suit is for injunction, the Trial Court should be convinced that the plaintiff is in possession of the

property and that there was a real threat to his possession at the instance of the defendants. Merely because the defendants are ex parte, it cannot be said that the plaintiff is entitled to a decree. The first respondent should plead and prove that he is in possession of the property and that he is also entitled to keep the property in his possession without any kind of disturbance from others.

10a. Decisions to be added:-

11. Though the suit was filed only against respondents 2 and 3, the relief is not restricted to them. The first respondent in his capacity as plaintiff wanted a decree restraining respondents 2 and 3 herein and their men agents, representatives, servants or any other person acting under them from interfering with his peaceful possession and enjoyment of the property. Such a prayer cannot be granted in the absence of proper parties. The Court should be convinced about the identity of the defendants who are interfering with the peaceful possession and enjoyment of the property by the plaintiff before passing a comprehensive decree binding persons.

12. The petitioner is claiming a right over the property in question. Nothing prevented the petitioner from filing a suit against the vendor of the first respondent, in case, he is convinced that his title is disputed or there is a threat to his possession. There is no question of impleading the petitioner in a simple suit for injunction filed by an agreement holder. The affidavit filed in

support of the application in I.A.No.478 of 2014 indicates that the petitioner wanted to decide his title as well as possession by impleading him as a party to the suit. The scope of the suit filed by the first respondent for injunction cannot be enlarged by impleading the petitioner as a party. Even if a decree is passed by the Trial Court against the Respondents 2 and 3, such decree would not be binding on the petitioner, so long as he was not made a party. In short, the decree would be binding only in case the petitioner was made a party to the civil suit. In any case, it is for the Trial Court to decide as to whether, by executing the agreement, his vendor has conveyed the property to the first respondent so as to enable him to file the suit for injunction. In any case, the petitioner is not a necessary party for deciding the claim made by the first respondent in O.S.No.234 of 2014. I therefore do not find any reason to take a different view in the matter. However, I make it clear that this order would not stand in the way of the petitioner from filing an independent suit against the first respondent or his vendor for appropriate relief, if he is so advised.

In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petitions are closed.

25.11.2015

svki

To

The I Additional District Munsif,
Pondicherry

K.K.SASIDHARAN,J.

svki

Pre-Delivery Order in
C.R.P.(PD) No.2655 of 2015

25.11.2015