

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD)No.3081 of 2015 &

M.P.No.1 of 2015

Martin Selvam

... Petitioner

v.

1.Jerald Muthaiya
2.Justice Cyril Thamarai Selvam
3.Raja Pannerselvam
4.Rosanna Savarimuthu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 27.03.2015 made in I.A.No.285 of 2014 in O.S.No.37 of 2014 on the file of District Munsif cum Judicial Magistrate, Nannillam.

For Petitioner : Mr.D.Ashok Kumar

ORDER

Challenging the fair and final order passed in I.A.No.285 of 2014 in O.S.No.37 of 2014 on the file of District Munsif cum Judicial Magistrate Court, Nannillam, the third party has filed the above Civil Revision Petition.

2. The first respondent-plaintiff filed the suit in O.S.No.37 of 2014 for declaration and permanent injunction. The defendants filed their written statement and are contesting the suit. Thereafter, the revision petitioner filed an application in I.A.No.285 of 2014 under Order I, Rule 10 of CPC to implead him as 4th defendant in the suit.

3. In the affidavit filed in support of the application, the revision petitioner has stated that the suit 'B' schedule property in R.S.Nos.122/2 and 114/3, situated at Moolangudi Village, is the property used as burial ground (samad) and maintained by their family. It is also the case of the petitioner that he gave a complaint to the Revenue and Panchayat officials stating not to give approval for manaipatta for converting the suit 'B' schedule property into house site. Further, according to the petitioner, the 'B' schedule property is a burial ground and therefore, no one has right to

alienate the propriety. The plaintiff filed his counter wherein he has stated that the land in R.S.Nos.122/2 and 114/3 have been purchased by him and therefore, the third party-petitioner has no right over the same. The defendants also filed their counter and opposed the application filed by the third party-petitioner.

4. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that the petitioner has not established his right over the suit property by producing necessary documents. That apart, the Trial Court also found that the plaintiff, being *dominant litus*, he has the right to choose against whom he wants to prosecute the matter.

5. In the absence of any acceptable evidence produced before the Trial Court to prove the right of the revision petitioner, the Trial Court has rightly dismissed the application. That apart, Ex.R-5 patta stands in the name of one Selvaraj Udayar, who is the grand father of Arokkia Jesintha. Even in Ex.B1 sale deed, it has been referred that suit 'B' schedule properties are being enjoyed by Arokiya Jesintha.

6. Though the petitioner has contended that he is having a right over the suit property, the said contention was not established by him by oral and documentary evidences. Except stating that it is a burial ground, the

petitioner has not proved the said contention. Since the plaintiff is the *dominant litus*, he cannot be compelled to implead the third party, that too, without proving the case of the revision petitioner. Taking into consideration all these aspects, the Trial Court has rightly dismissed the application.

7. In view of the above, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.07.2015

Index : No
Internet : Yes

Note : Issue copy of the order by 30.07.2015

Rj

To

The District Munsif cum Judicial Magistrate,
Nannillam.

M. DURAISWAMY,J.,

Rj

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