

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) Nos. 478 & 479 of 2015&M.P.Nos.1 & 1 of 2015

Deepak H Mehta,

...

Petitioner in both CRPs

Vs.

1. S.Gopi Nath,
2. R.Panneer Selvam,
3. V.Dhanasekar,
4. V.Kasthuri,
5. V.Umapathi,
6. V.Thiruvankadam,
7. R.Suguna,
8. N.Indira

...

Respondents in both CRPs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair Order and Decreetal Order dated 11.12.2014 of the Learned VIII Assistant Judge, City Civil Court, Chennai, passed in I.A.No.14913 of 2014 in O.S.No.5253 of 2014 and in I.A.No.14913 of 2014 and I.A.No.14914 of 2014 in I.A.No.14144 of 2014 in O.S.No.5253 of 2014 respectively.

For Petitioner in
both CRPs

:

Mr. G.Veerapathiran
for M/s. Surana and Surana

For Respondents in
both CRPs

:

Mr.K.Mohanamurali
for M/s. K.Santhi

COMMON ORDER

These civil revision petitions have been filed challenging the order of VIII Assistant Judge, City Civil Court, Chennai, passed in I.A.No.14913 of 2013 and 14914 of 2014 in I.A.No.14144 of 2014 in O.S.No.5253 of 2014.

2. The civil revision petitioner, as one of the plaintiffs, had instituted a suit in O.S.No.5253 of 2014 against the respondents 3 to 8 for bare injunction. According to the plaintiffs, the suit property was originally belonged to Vedandhi Murugappa Nayakkar. He executed a settlement deed dated 21.09.1946 in favour of his daughters Alamelu Ammal and Rajammal. Subsequently, some of the legal heirs of Alamelu Ammal and Rajammal, had executed a Power of Attorney in favour of third party and Power of Attorney Dharmalingam had executed the sale deeds dated 30.11.1992 in favour of Devaraj, Selvam, Raman and Shankar. In turn, the purchasers had executed settlement deed in favour of Anjali, Shanthi and Shanmugam. The plaintiff had purchased the properties by sale deeds dated 16.08.2004. It is further case of the plaintiff that the defendants had attempted to interfere with his peaceful possession and enjoyment of the property. Hence, the suit.

3. In the suit, the plaintiff had filed an application in I.A.No.14144 of 2014 praying for interim injunction. When the application was pending, the first respondent filed two applications in I.A.Nos.14913, 14914 of 2014 under Order 1 Rule 10 C.P.C to implead himself as a respondent in the interim application and also as a defendant in the original suit.

4. The applications were resisted by the petitioner stating that the proposed party is not a proper and necessary party to the suit. Despite serious objection by the petitioner, the learned judge allowed the applications. Challenging the order, the present civil revision petition is filed.

5. Mr.G.Veerapathiran, learned counsel for the petitioner submitted that the suit was filed only for bare injunction and in the suit, the Court has to decide whether the plaintiffs are in possession and enjoyment of the property. It is further submitted that the proposed party had already instituted a separate suit for declaration and for other relief in O.S.No.5690 of 2014. In support of his contention, the learned counsel has relied on the judgment reported **(1999(3 MLJ 386) (V.M.Subramani and Ors. Vs. Arulmugu Bhavanarayanassamy Temple represented by its Trustees).**

6. Per contra, Mr.K.Mohanamurali, learned counsel for the respondents submitted that the proposed party is one of the legal heirs of the settlees Alamelu ammal and Rajammal and as per settlement deed, the settlees did not have any right of alienation. The plaintiffs have filed the suit on the basis of a settlement and subsequent sale deeds and therefore, the petitioner is a necessary party to the suit.

7. In ((1999(3 MLJ 386) (*V.M.Subramani and Ors. Vs. Arulmugu Bhavanarayanasamy Temple represented by its Trustees*))), in that case a temple filed a case against the tenant for recovery of possession and the specific case of the temple was that the defendant is the tenant under the plaintiff, but he failed to pay the rent to the temple. In the suit, an application was filed by a third party claiming right over the property. In the above facts, this Court has held that the proposed party is not a necessary and proper party to decide the issues involved in the suit. I am of the opinion that the decision relied on by the petitioner does not have any bearing on the facts of this case.

8. It is not in dispute that the plaintiffs are seeking right over the property on the basis of the sale deeds dated 16.08.2004. Some of the legal heirs of Alamelu ammal and Rajammal, had executed a power of Attorney in favour of one Mr.Dharmalingam and the power holder had sold the property by

sale deed dated 30.11.1992. Subsequently, the purchasers have executed settlement deed on 10.08.2004 in favour of the vendors of the plaintiffs. The proposed party is one of the legal heirs of Alamelu ammal. According to the proposed party, the alienation made in favour of Devaraj, Selvam, Raman and Shankar is void.

9. In the light of the above facts, the trial court has allowed the application filed by the respondents. I do not find any illegality or irregularity in the impugned order. However, considering the facts, interim injunction filed by the plaintiffs is pending from 10.09.2014, the learned VIII Assistant Judge, City Civil Court, Chennai is directed to dispose of the application on merits within a period of one month from the date of receipt of copy of this order. The learned Judge shall dispose of the suit on merits and in accordance with law without being influenced by any of the observations made in this civil Revision.

10. Accordingly, the civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.02.2015

Index : Yes/No
Internet: Yes/No
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K.KALYANASUNDARAM,J.

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To
The Learned XVII Additional City Civil Judge at Chennai.

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&
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