

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2015

CORAM ::

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD) No.83 of 2015

and

M.P.Nos.1 and 2 of 2015

R.Shanmugam

... Petitioner

Vs

Parvathi Ammal (died)

Prabakaran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 28.11.2014 made in I.A.No.714 of 2014 in O.S.No.74 of 2010 on the file of Additional District Munsif, Villupuram.

For Petitioner : Mr.D.Ravichander

For Respondents : Mr.N.Suresh

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O R D E R

Challenging the order passed in I.A.No.714 of 2014 in O.S.No.74 of 2010 dated 28.11.2014 on the file of the Additional District Munsif Court, Villupuram, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff has filed the suit in O.S.No.74 of 2010 for bare injunction restraining the defendants from evicting him from the suit property, except

under due process of law. The first defendant, who is the mother of the plaintiff had died during the pendency of the suit. The second defendant is the grandson of the first defendant. The defendants have filed their written statement, wherein they have stated that the first defendant had executed a settlement deed in respect of the suit property in favour of the second defendant. After the death of the first defendant, the plaintiff has filed an application in I.A.No.714 of 2014 to implead the legal representatives of the deceased first defendant viz., the son and daughter.

3. The second defendant has filed his counter-affidavit stating that the legal representatives of the deceased first defendant are not necessary parties in view of the settlement deed executed by the first defendant in his favour on 21.10.2009.

4. The trial Court, after taking into consideration of the case of both the parties, dismissed the application. Aggrieved over the same, the plaintiff has filed the above Civil Revision Petition.

5. On perusal of the writ statement filed by the defendants, it is clear that the first defendant had executed a deed of settlement in favour of the second defendant. Though there is an averment in the written statement with

regard to the execution of the settlement deed in favour of the second defendant, that has to be proved only at the time of trial. The plaintiff has filed the application to implead the son (father of second defendant) and daughter of the first defendant as legal heirs

6. Though the present suit has been filed only for bare injunction and there is no prayer for declaration, in order to give proper adjudication of the matter, I am of the view that the legal representatives of the deceased first defendant are necessary parties and they should be impleaded as defendants in the suit. Further, it would be appropriate to give a finding with regard to the settlement deed dated 21.10.2009 in the presence of all the legal representatives of the deceased first defendant.

7. Therefore, I am of the considered view that the legal representatives of the first defendant are proper and necessary parties in the suit. The trial Court shall give a finding with regard to the execution of the settlement deed dated 21.10.2009 executed by the first defendant in favour of the second defendant at the time of deciding the suit. Since the present suit has been filed by the plaintiff only for bare injunction, by giving a finding with regard to the execution of settlement deed, it would not enlarge the scope of the suit. In these circumstances, the fair and decretal order dated 28.11.2014 passed

in I.A.No.714 of 2014 in O.S.No.74 of 2010 are set aside and the application in I.A.No.714 of 2014 in O.S.No.74 of 2010 stands allowed.

8. The Civil Revision Petition is allowed. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are closed.

9. Mr.N.Suresh, learned counsel appearing for the respondents has submitted that his counter part appearing before the Additional District Munsif Court, Villupuram undertakes to file vakalat on behalf of the proposed parties on the next date of hearing and file their written statement, if necessary. In view of the above said submission, the trial Court viz., the Additional District Munsif, Villupuram is directed to dispose of the suit in O.S.No.74 of 2010 on merits and in accordance with law within a period of three (3) months from the date of receipt of a copy of this order and report the same to this Court.

12.06.2015

Index : Yes/No

Internet : Yes/No

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Note : Issue order copy of 15.06.2015.

To

The Addl. District Munsif,
Villupuram.

M.DURAIWAMY, J

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C.R.P.No.83 of 2015

12.06.2015