

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

**C.R.P.No.1122 of 2012 (PD)
and
M.P.No.1 of 2012**

Chandrammal

... Petitioner

Vs.

1.Murugan
2.Saraswathi
3.Subramani

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 24.01.2012 passed in I.A.No.661 of 2011 in O.S.No.234 of 2010 on the file of the learned District Munsif Court, Vellore, District.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : No Appearance

O R D E R

When the Civil Revision Petition was taken up for hearing on 23.09.2015, Mr.K.Govi Ganesan, learned counsel appearing for the petitioner was present and

ready to argue the case. But, there was no representation for the respondents. Even the order sheet reveals that the respondent had never chosen to enter appearance to get on with the revision petition and therefore, this revision petition was ordered to be listed today under the caption "for orders". Even today also there is no representation for the respondents. However, Mr.K.Govi Ganesan, the learned counsel appearing for the petitioner is present.

2. After hearing Mr.K.Govi Ganesan, learned counsel appearing for the petitioner and perusing the grounds of revision as well as the impugned order, this Court finds that it may be appropriate to dispose of this civil revision petition in the absence of the respondents on merits.

3. It is manifested from the records that the revision petitioner had filed a suit in O.S.No.234 of 2010 on the file of the District Munsif Court, Gudiyatham, Vellore District as against the 3rd respondent herein and thereby sought the relief of specific performance of contract of sale and to direct the 3rd respondent to surrender possession of the property. The 3rd respondent being the defendant had contested the suit by filing his written statement. After framing of necessary issues, the process of recording of evidence of witnesses on both sides was

commenced and when the matter was listed for recording the evidence of P.W.3, the respondents 1 and 2 herein, claiming themselves as the sons of the 3rd respondent, who is the vendor of the revision petitioner, had engaged with an application in I.A.No.661 of 2011 under Order 1 Rule 10(2) of CPC to implead themselves as the defendants in the suit claiming that they had got right over the suit property. That petition was strenuously contested by the revision petitioner being the plaintiff by filing his counter affidavit and after hearing both sides, the learned District Munsif had proceeded to allow that application on 24.01.2012. Challenging the legality of the order passed by the trial Court, the revision petitioner being the plaintiff stands before this Court with this civil revision petition.

4. Mr.K.Govi Ganesan, the learned counsel appearing for the petitioner has argued that the respondents 1 and 2 who were the applicants in the application in I.A.No.661 of 2011, were not parties to the agreement of sale, which was entered in to between the revision petitioner and 3rd respondent. The revision petitioner had filed the above suit only as against the 3rd respondent to enforce the agreement of sale dated 18.09.2008. Under this circumstance, the respondents 1 and 2 are not entitled to get themselves impleaded in the suit as they were not

parties to the contract. In the absence of privity of contract between the revision petitioner/plaintiff and the respondents 1 and 2, the revision petitioner cannot be compelled to fight against the parties who are totally stranger to the contract of sale dated 18.09.2008, to get the relief which he has sought in the suit and it is only the third respondent who is the competent and appropriate person against whom the revision petitioner has filed the suit claiming reliefs. Under the circumstance, this Court finds that the learned District Munsif has misconstrued the provisions under Order 1 Rule 10(2) of CPC and found that the respondents 1 and 2 are entitled to be impleaded in the suit. The impugned order dated 24.01.2012 appears to be perverse in nature and therefore, it is liable to be set aside as it is suffered from illegality. It is also to be noted that already two witnesses were examined on the part of the revision petitioner. P.W.3 is to be examined and necessary documents are to be marked. Under this circumstance, this Court finds that the revision petition deserves to be allowed and the impugned order is liable to be set aside.

5. In the result, this petition is allowed and the impugned order dated 24.01.2012 is set aside and the application in I.A.No.661 of 2011 is dismissed. The learned trial Judge is directed to dispose of the above suit within the prescribed

time of three months without loss of further time. However, there shall not be any order as to costs. Consequently, connected M.P. is closed.

25.09.2015

Index: Yes/No
Internet: Yes/No
rrg

To

The District Munsif Court,
Gudiyatham,
Vellore District.

T.MATHIVANAN.J.,
rrg

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