



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.01.2015
CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD)No.2254 of 2014
and
M.P.(MD)No.2 of 2014

Rajendran .. Petitioner/Petitioner/3rd Party

Vs.

1. R.Mani .. 1st Respondent/1st Respondent/Plaintiff

2. P.Sudali .. 2nd Respondent/2nd Respondent/Defendant

Prayer: Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.721 of 2014 in O.S.No.390 of 2013 dated 08.09.2014, on the file of the Subordinate Court, Tuticorin.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.P.nellaiyappan for R.1
: No Appearance for R.2

ORDER

This Civil Revision Petition is filed by one Rajendran, who is the third party to the proceedings claiming his right under an agreement to sell.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the first respondent.

3. The present suit in O.S.No.390 of 2013 is filed for declaration that the defendant is an encroacher and for recovery of possession. It would be useful to state the few facts for better understanding of the case.

4. The original owner of the suit property is one Subramani, who had given a power of attorney to one Sudali, who is the defendant in the suit. On the strength of the power of attorney, an agreement was to sell executed in favour of the revision petitioner on 28.02.2010. While so, on 14.12.2010, the original owner Subramani had executed another sale agreement in favour of the present plaintiff. The revision petitioner filed O.S.No.141 of 2011 before the Principal Subordinate Court, Tuticorin for the relief of specific performance against the owner as well as the power of attorney and also obtained an order of interim injunction not to alienate the suit property, which was granted on 29.04.2011 and extended till 09.06.2011. The defendant in the said suit who is the owner of the property was served with summons and also filed his written statement.



5. Be that as it may, the subsequent agreement holder who is the plaintiff herein had filed another suit in O.S.No.196 of 2011 before the same Court for specific performance against the original owner. The original owner Subramani appeared in the said suit in O.S.No.196 of 2011 and submitted to the decree, suppressing the suit filed by the petitioner herein in O.S.No.141 of 2011. Accordingly a decree was passed on 20.06.2011.

6. The petitioner herein submits that having known the fraudulent activities of the original owner Subramani, he wanted to implead himself in the present suit in O.S.No.390 of 2013. It is also submitted that he had filed an application to implead the subsequent purchaser Mani in the suit pending in O.S.No.141 of 2011 and the said application was also pending. In these circumstances, the revision petitioner has filed an application in I.A.No.721 of 2014 to implead him in the suit. The said application was dismissed by the Subordinate Court, Tuticorin on the ground that the petitioner has got no interest in the suit property as he has got only a sale agreement, which does not give any right or title to the property. The said order is under challenge in the present Civil Revision Petition.

7. The petitioner has also filed an application to implead the subsequent purchaser in the suit filed by him which is pending in O.S.No.141 of 2011. Once the said impleadment is allowed, the suit can be properly adjudicated in the presence of all the necessary parties. Therefore, the trial Court was correct in disallowing the impleadment petition holding that a person, who has got no right or title in the suit property, is not a necessary party. In the above factual matrix, there is no material irregularity to interfere with the order of the trial Court.

8. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. No costs.

Sd/-
Assistant Registrar(T & P)

\\True copy\\

Sub Assistant Registrar

To

The Subordinate Court, Tuticorin.

+1cc to MR.H.ARUMUGAM, ADVOCATE SR.NO.2581

+2CC TO MR.P.NELLAIYEPPA, ADVOCATE SR.NO.2304

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