



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD).No.342 of 2015 (PD)

and

M.P. (MD).No.1 of 2015

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S.Arunachalam ... Revision Petitioner/Plaintiff

vs.

1.SA.Subramanian ...1st Respondent/Defendant

2.D.Ramasamy

3.P.Noor Mohaideen ... Respondents 2&3/Proposed Defendants 2&3

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.447 of 2014 in O.S.No.636 of 2011 on the file of the II Additional District Munsif Court, Tirunelveli dated 10.12.2014 by allowing this civil revision petition.

For Petitioner : Mr.T.Selvan

For R2 and R3 : Mr.J.Ashok

for M/s.Jayapaul Associates

For R1 : No appearance

O R D E R

The revision is filed by the plaintiff against the order of refusing to implead the proposed party in a suit for injunction restraining the defendants from alienating or encumbering the suit property and for permanent injunction restraining the defendants from interfering with the possession of the suit property.

2.Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

3.The plaintiff is the son of the first defendant, who is the father. The plaintiff had stated that there was an agreement executed by the first defendant/father in favour of the plaintiff on 28.06.2011 agreeing to sell the suit property. However, admittedly he has not filed any suit for specific performance based on the same.

4.In the written statement, it is stated by the first defendant that he had already sold the suit property on 24.11.2011 to third party, who has sought to be impleaded now. The suit is filed only on 10.12.2011 which is after the alleged sale. The plaintiff seeks to implead the third party purchaser in the suit.



5.The first and second respondents, who are the proposed party represented that they had already filed a suit in O.S.No.194 of 2012 on the file of the First Additional Subordinate Court, Tirunelveli for declaration of title and recovery of possession against the plaintiff.

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6.In the above factual matrix, the trial Judge dismissed the application holding that there is no cause of action against the proposed party. The sale had already been taken place much prior to the suit and there is also a comprehensive suit filed by the subsequent purchaser viz., the proposed party, which is also pending before the First Additional Subordinate Court, Tirunelveli. For the above reasons, the application has been dismissed.

7.Now, the only question that has to be seen in this revision is whether the dismissal of the application to implead the third party is correct or not.

8.Admittedly, the proposed party had purchased the suit property much prior to the filing of the suit. The present suit is filed only against the father for an injunction not to alienate the property and the title, cannot be gone into the said suit. Therefore, if the proposed party is not impleaded, it will not affect the effective and complete adjudication that can be made. Admittedly, there is no cause of action against the proposed party, as the relief sought for in the suit is for injunction not to alienate. In the event of decree being passed, it will not bind the third party, as his sale is much prior to the filing of the suit. Therefore, the decree will not be binding on him; any outcome of the suit also will not have any adverse effect on him. Apart from that, he is also not a purchaser pending *Lis*. Therefore, the dismissal of the impleadment application by the trial Court is correct, which does not warrant interference by this Court.

In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

The IInd Additional District Munsif ,Tirunelveli.

+One cc to M/s.J.Ashok, Advocate, SR.No.15193

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<https://hsr.judges.e-courts.gov.in/hsr/15/14/2015>

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