

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2465 of 2015

R.Thikvijayapandian : Petitioner

versus

1.Sheela

2.The Pudupet Cooperative society Ltd,
No.15 Thulasingham Street,
Pudupet, Chennai 600 002.

3.Narayanalal : Respondents

PRAYER: Revision filed against the fair and decreetal order dated 27.3.2015 in I.A.No.50 of 2013 in O.S.No.4538 of 2011 on the file of the XIX Additional City Civil Court, Chennai.

For petitioner :: Mr.B.Vijayakumar

For respondents :: Mr.K.Raju, for R-1

No appearance for R-2

R-3 not served

ORDER

The first respondent filed a suit against respondents 2 and 3 in O.S.No.4538 of 2011 before the XIX Additional Judge, City Civil Court, Chennai, praying for a decree of declaration that the auction sale held on 10 April 2007 is null and void and consequently to declare the nullity of the sale deed executed on 4 June 2007.

2. The suit was resisted by the respondents.

3. The petitioner, long after the commencement of trial, filed an application in I.A.No.50 of 2013 to implead him as a party to the suit. The application was opposed by the first respondent.

4. The learned Trial Judge having found that the petitioner himself was a tenant under the first respondent along with the second respondent and that he was aware of the entire proceedings, dismissed the application and imposed a sum of Rs.25,000/- by way of cost. The said order is under challenge in this civil revision petition.

5. The learned counsel for the petitioner contended that the petitioner purchased a portion of the property from the second respondent and as such, he is a necessary party for an effective adjudication of the matter. The learned counsel further contended that even if there is no merit in the application filed by the petitioner, still, the learned Trial Judge was not correct in imposing heavy cost.

6. The learned counsel for the first respondent submitted that the third respondent sold the property to the petitioner during the currency of the injunction granted by the High Court originally and thereafter, by the City Civil Court. According to the learned counsel, it was only on account of the indifferent attitude taken by the petitioner and the third respondent and

their violation of the order passed by this Court, the Trial Court imposed cost.

7. The first respondent filed a suit, in C.S.No.789 of 2007, for declaration. In the said suit, this Court granted interim injunction restraining the third respondent from alienating or encumbering the property. The said order was subsequently made absolute. It is a matter of record that only during the currency of the order of injunction, the third respondent sold the property to the petitioner.

8. The petitioner was a tenant under the first respondent. The third respondent was also a tenant under the first respondent. The Trial Court is therefore perfectly correct in its observation that the petitioner was aware of the pending proceedings relating to the property. In fact, the petitioner was sitting on the fence and it was only after the commencement of trial, he filed the petition for impleading. I am therefore of the view that the learned Trial Judge was correct in dismissing the application.

9. The next question is whether the Trial Court was correct in imposing cost.

10. There is no dispute that only during the currency of the order of injunction, the third respondent assigned the property to the petitioner. The

petitioner was not a party to the suit originally. He was not a party to the

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order of injunction granted by this Court. There are no materials before this Court to show that the order of injunction was served on the petitioner. Such being the factual position, the learned Trial Judge was not correct in directing the petitioner to pay a sum of Rs.25,000/- as cost. I am therefore of the view that the order insofar as directing the petitioner to pay cost is liable to be set aside.

11. In the result, the order dated 27 March 2015 is set aside in part. In short, the order is set aside only insofar as the direction regarding payment of cost. The order would stand in all other respects.

12. The civil revision petition is disposed of with the above modification of the order passed by the Trial Court. No costs. Consequently, M.P.No.1 of 2015 is closed.

14.11.2016

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To
The XIX Additional City Civil Court, Chennai.

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