

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.587 of 2016

and

C.M.P.No.3116 of 2016

1.Arayer @ Lakshmi
2.Jaganathan

... Petitioners

vs.

1.M.Indira
2.Sundarajan
3.Muthusamy
4.A.Nithyanandam
5.N.Dhandapani

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 29.10.2015 in I.A.No.342 of 2015 in O.S.No.165 of 2014 on the file of Principal Subordinate Judge, Salem.

For Petitioners : Mr.T.Karunakaran

ORDER

The matter stands listed today for admission. This court is of the view that the civil revision petition can be disposed of at the stage of admission itself even without notice to the other side. Accordingly, the arguments advanced by Mr.T.Karunakaran, learned counsel for the petitioners are heard. The grounds of revision, copy of the impugned order and copies of the other documents produced by the petitioners in the form of typed sets of papers are also perused and taken into consideration.

2. The petitioners in the present civil revision petition filed under Article 227 of the Constitution of India are the defendants 3 and 4 in the original suit O.S.No.165/2014 pending on the file of Principal Subordinate Judge, Salem. The said suit was filed by the first respondent herein as sole plaintiff against the respondents 2 and 3 herein showing them as defendants 1 and 2 and the petitioners herein showing them as defendants 3 and 4. The reliefs sought for in the plaint are: 1) declaration of the title of the first respondent/plaintiff in respect of the suit property; 2) mandatory injunction to demolish the superstructure if any built, in the suit property and 3) direction to the defendants to hand over vacant possession of the suit property to the first respondent herein/plaintiff.

2. The petitioners herein/defendants 3 and 4, besides denying the title of the first respondent herein/plaintiff, set up title in themselves and claiming that they purchased the suit property from one Nithyanandam, shown as the 4th respondent in the civil revision petition and his son Dhandapani, shown as the 5th respondent in the civil revision petition. The first respondent herein/plaintiff claims to have purchased the suit property from the very same Nithyanandam and others through their agent holding Power of Attorney, namely the second respondent Sundarrajan. The sale deed in favour of the first respondent herein/plaintiff was earlier in point of time, whereas the sale deed relied on by the petitioners herein/defendants 3 and 4 is a subsequent document. As such, two sets of people, namely the first respondent herein/plaintiff on one hand and the revision petitioners herein/defendants 3 and 4 on the other hand are making rival claims claiming

title to the suit property.

3. When such rival claims are made and both claim to have derived title from one and the same person, the petitioners have chosen to file an application before the court below as I.A.No.342/2015 under Order X Rule 10(2) CPC to implead their vendors as party-defendants. Neither Nithyanandam nor his son claims title to the suit property at present. The plaintiff is not having any grievance against Nithyanandam and his son. Since Nithyanandam and his son are said to have parted with the property in favour of the revision petitioners herein, they can very well represent their interest and the vendors of the revision petitioners, who are also projected as vendors of the first respondent herein/plaintiff, are not necessary parties to a suit for declaration filed by the first respondent herein/plaintiff. As they are not necessary parties, the revisions petitioners, who are the defendants 3 and 4, cannot sustain the prayer for impleadment of their vendors and thereby dictate to plaintiff as to against whom they have to seek the relief.

4. The learned trial judge, on proper consideration of the averments made in the application, chose to dismiss the same. By such dismissal, the court below has not exercised any jurisdiction not conferred on it. It cannot also be said that it has failed to exercise the jurisdiction conferred on it and it cannot also be stated that the court below exceeded the jurisdiction conferred on it or exercised the jurisdiction conferred on it in such a way to cause miscarriage of justice or gross injustice, which alone shall warrant an interference by this court in exercise of its power of superintendence under Article 227 of the Constitution of India. There is no merit in the civil revision petition and the revision deserves to be dismissed at the threshold.

In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

26.02.2016

Index : Yes
Internet : Yes
asr

To

The Principal Subordinate Judge, Salem

P.R.SHIVAKUMAR, J.

asr/-

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