

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)Nos.707 and 708 of 2016  
and  
CMP No.3640 of 2016

G. Karthikeyan ... Petitioner in both the revisions

vs

1. B. Renushree
2. N. Tamil Iniyan
3. S. Suryamoorthy
4. V. Vairavel
5. V. Sivakami
6. T.N. Balakrishnan

... Respondents in CRP No.707/2016

1. V. Vairavel
2. V. Sivakami
3. B. Renushree
4. N. Tamil Iniyan
5. T.N. Balakrishnan
6. S. Suryamoorthy

... Respondents in CRP No.708/2016

Civil Revision Petitions filed under Sec.115 of the Civil Procedure Code against the orders dated 11.01.2016 in I.A.Nos.270 and 271 of 2015 in I.A.No.248 of 2012 in O.S.No.262 of 2009 on the file of II Additional District Court, Erode.

For Petitioner : A.K. Kumarasamy

For R.1 in CRP No.: Mr.R. Narayanan  
707/2016 & R.3 in Power of Attorney  
CRP No.708/2016

### **COMMON ORDER**

Challenging the fair and final order passed in I.A.No.270 of 2015 in I.A.No.248 of 2012 in O.S.No.262 of 2009 on the file of II Additional District Court, Erode, the revision petitioner, who is a third party to the proceedings, has filed the Civil Revision Petition in C.R.P No.707 of 2016.

2. Civil Revision Petition No.708 of 2016 has been filed by the revision petitioner, who is a third party to the proceedings, challenging the fair and decreetal order passed in I.A.No.271 of 2015 in O.S.No.262 of 2009 on the file of II Additional District Court, Erode.

3. The plaintiffs filed a suit in O.S.No.262 of 2009 for declaration and permanent injunction. In the said suit, the defendants filed an application in I.A.No.248 of 2012 under Order 1 Rule 10 of Civil Procedure Code to implead the revision petitioner as a defendant in the suit. Since the plaintiffs failed to appear before the trial Court,

the trial Court dismissed the prayer, sought for by the plaintiffs and decreed the counter-claim, filed by the defendants for recovery of possession.

4. Mr.A.K. Kumarasamy, learned counsel, appearing for the revision petitioner, submitted that the trial Court had also allowed the impleading application in I.A.No.248 of 2012, however, the plaintiffs have not taken steps to amend the plaint under Order 6 Rule 18 of Civil Procedure Code. Further, the defendants also did not take steps to amend the counter claim, after impleading the revision petitioner, as defendant. The trial Court, by its judgment and decree dated 31.01.2013, dismissed the suit, filed by the plaintiffs and decreed the counter claim, filed by the defendants.

5. On a perusal of the cause title in the judgment and decree, passed in the suit in O.S.No262 of 2009, it is clear that the revision petitioner has not been arrayed as a party in the suit. The decree for recovery of possession was passed only as against the plaintiffs and not against the revision petitioner.

6. Pursuant to the decree granted in the counter-claim, the

first defendant filed an Execution Petition in E.P.No.12 of 2014 on the file of II Additional District Court, Erode against the plaintiffs. Even in the Execution Petition, the revision petitioner was not made as a party. However, During the pendency of the Execution Petition, the revision petitioner filed an application under Order 21 Rule 58 of Civil Procedure Code in E.A.No.44 of 2014 in E.P No.12 of 2014 to declare that he is entitled to the suit property by virtue of sale deed dated 22.01.2010.

7. Mr.R. Narayanan, the power of attorney, appeared for the third respondent. The third respondent/Power of attorney submitted that the purchase made by the revision petitioner is hit by the principles of *lis pendens*. However, the said issue can be decided in the application, filed under Order 21 Rule 58 of Civil Procedure Code.

8. It is submitted that the defendants filed their counter and are contesting the application in E.A.No.44 of 2014. The revision petitioner also filed an application in I.A.No.270 of 2015 to condone the delay of 836 days in filing the application to set aside the ex-parte order passed in the application in I.A.No.248 of 2012. The petitioner also filed an application in I.A.No.271 of 2015 to condone the delay of

717 days in filing the application to set aside the ex-parte decree dated 31.01.2013.

9. As already stated, the revision petitioner is not a party to the proceedings in the suit in O.S.No.262 of 2009. Further, the defendants have filed an Execution Petition by virtue of the decree granted in the counter claim only as against the plaintiffs.

10. When no decree was passed as against the revision petitioner and when the revision petitioner has not explained the reasons for the delay in a proper manner, the trial Court had rightly dismissed both the applications. Since the application, filed under Order 21 Rule 58 of the Civil Procedure Code before the Executing Court, is pending, the rights of the revision petitioner can be decided in the said application.

11. In view of the same, I am of the considered view that the revision petitioner can prosecute the application in E.A.No.44 of 2014 and the Executing Court shall decide the rights of the revision petitioner in the said application, on merits and in accordance with law.

**M. DURAISWAMY,J.,**

sr

With these observations, I do not find any error or irregularity in the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and the same are dismissed. No costs. Consequently, connected CMP is closed.

23-09-2016

sr

Index:no  
website:yes

To

The II Additional District Court, Erode.

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