

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.781 of 2016
and CMP.No.4320 of 2016

P.K.Vinayagam
S/o.Kishta Pillai
Mettu Street,
Pulavanpadi Village,
Arni Taluk,
Thiruvannamalai District.

.. Petitioner

Vs

1.Saraswathi
W/o.Kuppusami
Vinnamangalam Village,
Arni Taluk,
Thiruvannamalai District.

2.Perumal
Kattaiya Gounder @ Chinnakulandai
Vinnamangalam Village,
Arni Taluk,
Thiruvannamalai District.

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India praying to direct the learned Subordinate Judge, Arni to number the E.A.SR.No.1521 of 2016 in E.A.No.206 of 2013 in E.P.No.109 of 2010 in O.S.No.36 of 2010 filed under Order XXI Rule 97 of CPC and Section 151 CPC and dispose the same on merits.

For Petitioner

:Mr.J.Karthikeyan

ORDER

The third party/claimant is the revision petitioner. The first respondent herein is the plaintiff/decreed holder and the second respondent is the defendant/judgment debtor in the suit in O.S.No.36 of 2010 and in E.P.No. 109 of 2010 respectively.

2. The suit in O.S.No.36 of 2010 on the file of Sub Court, Arni, has been filed by the first respondent herein against the second respondent, seeking the relief of specific performance. The Court below has passed an ex parte decree dated 30.08.2010.

3. According to the claimant/petitioner herein, when the Court passed the ex parte preliminary decree, the decree included the property belonging to the claimant/revision petitioner also. This property is stated to be situated at S.No.182/2, to an extent of 0.18.0 acres (44 cents) at Vinnamangalam Village, Arni Taluk.

4. The decree holder in O.S.No.36 of 2010 is also stated to have filed another suit for specific performance in O.S.No.95 of 2012 before the Sub Court, Arni against one Angammal, who is the mother of the petitioner's vendor, in respect of the property covered in S.No.182/2, an extent of 0.18.0 acres (44 cents) at Vinnamangalam Village, Arni Taluk.

5. After contest, the suit in O.S.No.95 of 2012 was dismissed on the ground that this property did not belong to the judgment debtor.

6. It is the case of the revision petitioner that he is a bonafide purchaser for value, without notice of the pending suit, of the property in S.No.182/2, an extent of 0.18.0 acres (44 cents) at Vinnamangalam Village, Arni Taluk and that he came to know about the exparte decree only after the purchase.

7. The first respondent/decreed holder has filed E.P.No.109 of 2010 in O.S.No.36 of 2010 for execution and has also filed the E.A.No.206 of 2013 for delivery of the suit property.

8. The third party, as claimant, has filed the applications under Order XXI Rule 97 C.P.C., claiming that he is the owner of the property in execution. The Sub Court, Arni, returned the applications filed in E.A.SR.No.1521 of 2016 and E.A.SR.No.1522 of 2016 questioning the maintainability of the applications under Order XXI Rule 97 C.P.C.,

9. Challenging the said order, this revision petition has been filed.

10. As per the decision reported in (2011) 15 SCC 377 (Har Vilas Vs. Mahendra Natha and Others), a third person claiming to be in possession of the property, forming subject matter of decree, in his own right, can resist delivery of possession, even by filing an objection under Order XXI Rule 97 in the Executing Court itself and the objection shall have to be determined by the Executing Court itself.

11. The claim of the third party/claimant/revision petitioner is covered more appropriately under Order XXI Rule 99 of C.P.C., also. Provisions of Order XXI Rule 99 is applicable, not only to the person dispossessed but also to the persons whose possession is about to be dispossessed.

12. Under the stated circumstances, the Executing Court is directed to take the Execution Petition on file under Order XXI Rule 97 read with Rule 99 and to proceed further in accordance with law.

13. With these observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Registry is directed to return the original applications.

11.03.2016

ds

Note : Issue order copy on 14.03.2016

To:

The Sub Court,
Arni.

S.VIMALA,J.

ds

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