

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP(PD).No.3485 of 2013

and

M.P.No.1 of 2013

Shanmugam

... Petitioner

v.

Manonmani

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 13.02.2013 passed by the learned Subordinate Judge, Pollachi in CMA.No.7 of 2010 concurring the fair and final order dated 23.04.2010 passed by the learned District Munsif, Pollachi in I.A.No.551 of 2010 in O.S.No.166 of 2010 and prays to set aside the same.

For Petitioner: Mr.M.N.Balakrishnan

ORDER

The defendant in O.S.No.166 of 2010 is the Civil Revision Petition before this Court. Challenging the judgment and decree in CMA.No.7 of 2010, on the file of the learned Sub-Judge, Pollachi, dated 13.02.2013 and the judgment and decree in I.A.No.551 of 2010 in O.S.No.166 of 2010 dated 23.04.2010, on the file of the learned District Munsif, Pollachi, this Civil Revision Petition has been filed before this Court.

2.The plaintiff has filed the suit in O.S.No.166 of 2010 for declaration and consequential permanent injunction against the defendant, who is the petitioner herein.

3.It is the case of the petitioner is that the suit property is a small house in an extent of 1½ cents situated in S.F.No.336/1B1B of Vadapudur Village. Along with the suit property in the adjacent of the property in S.F.No.336 to an extent of 33½ cents was belongs to one Mr.Kaliappa Gounder. The said Kaliappa Gounder died leaving behind his son Mr.K.Mayilsamy and others. The plaintiff has purchased the property from the said Mayilsamy and others to an extent of 1½ cents by sale deed dated 02.06.1988.

4.It is further case of the petitioner is that the adjacent properties of various extents were also sold by the said Mayilsamy to other different persons. After purchasing the property, the plaintiff has constructed the house in the vacant site and she is in possession and enjoyment over the same. She is also paid the house tax and obtained the Electricity connection in Service No.354-008-166. The plaintiff also obtained separate patta in favour of the plaintiff. The defendant has purchased the property in S.F.No.336 through Court auction and also taken proceedings to get possession of the property.

5.It is the further case of the plaintiff is that the defendant also given a paper publication through his Advocate stating that if he has purchased the property through the Court auction and also get the possession. Subsequently, the executing proceedings were initiated in E.P.R.No.130 of 1989 in O.S.No.12 of 1983, on the file of the learned Subordinate Judge, Pollachi.

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6.It is further case of the plaintiff is that well prior to the attachment made in the execution proceedings, she has purchased the small extent of property from the son of judgment debtor. When the

plaintiff came to know from the Amin's Warrant and possession receipt that the defendant has stage managed things as if he has taken the actual possession of the property. But the other purchasers have made claim applications and their names were deleted by the Court. Though the plaintiff's name was entered in the encumbrance certificate, the petitioner/defendant cannot plead ignorance about the plaintiff sale. Therefore, the Court auction sale purchased by the defendant is not binding upon the plaintiff. Therefore, he has filed the suit for declaration and temporary injunction, along with the suit, the plaintiff has filed I.A.No.551 of 2010 for temporary injunction.

7.It is the case of the petitioner/defendant is that he denied all the averments made by the plaintiff in the suit as well as the injunction application. The petitioner/defendant states that originally Mr.Kaliappa Gounder having 0.45½ cents of land in S.F.No.336. The purchase of the property to an extent of 1½ cents on 02.06.1988 is not valid in the eye of law, since the said Mayilsamy have no rights to execute any sale deed either to the plaintiff or any other persons.

8.Originally the said Kaliyappa Gounder purchased the property of 0.45½ cents from one Chinnasamy Gounder on 15.04.1968 in

S.F.No.336. Later on, the said Kaliyappa Gounder sold an extent of 5 cents to one Perianayaki Ammal and an extent of 7 cents to one Sivasami on 28.10.1980.

9.It is the further case of the petitioner/defendant that Periyannayaki Ammal has sub-divided as S.F.No.336/1A and Sivasami's land is subdivided as S.F.No.336/1C. Therefore, the said Kaliappa Gounder had remaining land of 0.45½ cents after selling 12½ cents. After the demise of Kaliappa Gounder, his daughter Indirani filed a partition suit in O.S.No. 20 of 1985 before the learned Sub-Court, Udumalpet, claiming 1/7th share and preliminary decree was passed on 25.09.1987. Therefore, Mayilsamy had no right to sell the suit property and hence, the sale deed in favour of the plaintiff is not valid. Apart from this, the loan borrowed by the Kaliappa Gounder, one Ambujammal filed a suit in O.S.No.61 of 1982 before the learned Subordinate Court, Udumalpet and the said property was attached in I.A.No.336 of 1982. Apart from this, one Mr.Krishnasamy Gounder had filed a suit in O.S.No.2 of 1984 before the Subordinate Court, Udumalpet and the suit property was attached in E.P.No.53 of 1987 on 07.11.1987. After due partition only Mayilsamy can sell the property allotted to him, since the plaintiff is having only a defective title and

she has not a bonafide purchaser. After knowing about the partition suit, the money suit and the Execution Proceedings, the plaintiff has purchased the suit property as alleged by the plaintiff from the said Mayilsamy, therefore, the suit property itself is not valid in the eye of law.

10. Apart from this, the petitioner/defendant also states that the suit is barred by limitation, since the Execution Proceedings in E.P.No.130 of 1989 has not taken any steps on the earlier and after a lapse of 22 years, the present suit has been filed. Therefore, he prayed for dismissal of the suit as well as the injunction application in I.A.No.551 of 2010.

11. Considering both side cases, the learned District Munsif, Pollachi, was allowed the injunction application in I.A.No.551 of 2010 in O.S.No.166 of 2010 on 23.04.2010 in favour of the plaintiff. Challenging the said judgment and decree, the petitioner/defendant has filed an appeal in CMA.No.7 of 2010 before the learned Sub-Judge, Pollachi and the said CMA was dismissed by the learned Sub-Judge, Pollachi, on 13.02.2012 by confirming the order dated 23.04.2010 in O.S.No.166 of 2010. Challenging both the orders, the

petitioner/defendant has filed the present Civil Revision Petition before this Court.

12.I heard Mr.M.N.Balakrishnan, learned counsel for the petitioner and and perused the entire records.

13.Admittedly, the learned District Munsif, Pollachi, has allowed the I.A.No.551 of 2010 on 23.04.2010 and the appeal in CMA.No.7 of 2010 was also dismissed, by confirming the said order in I.A.No.551 of 2010 by the learned Sub-Judge, Pollachi on 13.02.2012. Therefore, the injunction order is still in force from 2010 to till date.

14.It is my absolute view that it is not properly heard the injunction application on merits. Therefore, if the suit is taken on file in the trial, definitely the evidence of both the parties will clearly proved the real owner of the property. Therefore, it is proper and in the interest of justice, this Civil Revision Petition is liable to be disposed of with an appropriate direction to the learned District Munsif, Pollachi, to dispose the suit on merits within the stipulated period.

15.In the result:

(a) this Civil Revision Petition is disposed of;

(b) the learned District Munsif, Pollachi, is directed to dispose of the suit in O.S.No.166 of 2010 without influencing the order passed in I.A.No.551 of 2010 in O.S.No.166 of 2010 and CMA.No.7 of 2010 within a period of two months from the date of receipt of a copy of this order. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit within the stipulated time granted by this Court. No costs. Consequently, connected miscellaneous petition is closed.

19.12.2016

Note: Issue order copy on 19.03.2018

vs

Index: Yes/No

Internet: Yes/No

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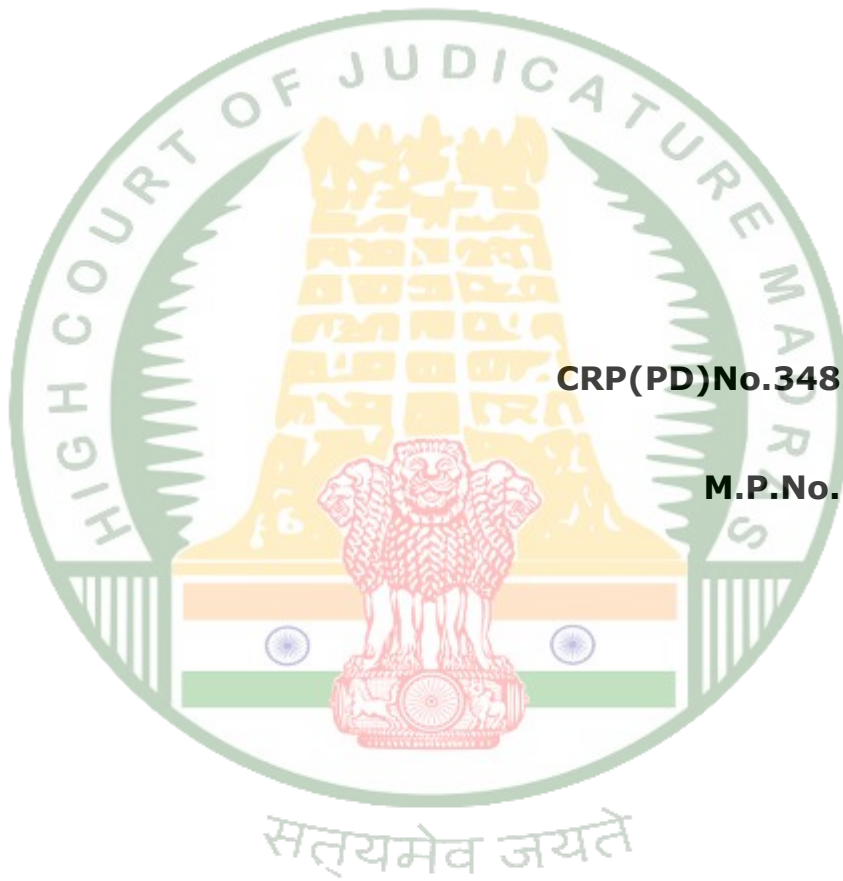
1. The Subordinate Court, Pollachi.

2. The District Munsif Court, Pollachi.

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M.V.MURALIDARAN,J.

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