

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

Civil Revision Petition (PD) No.3295 of 2012 &
M.P.No.1 of 2012

1. Mani

2. Padmavathy

... Petitioners

VS

Lucina Fathima

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and decretal order dated 04.04.2012 passed in I.A.No.121 of 2012 in O.S.No.43 of 2010 on the file of the Principal District Munsif Court, Villupuram.

For Petitioner : Ms.R.Meenal

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 04.04.2012 passed in I.A.No.121 of 2012 in O.S.No.43 of 2010 on the file of the Principal District Munsif Court, Villupuram.

2. When the matter came up for hearing yesterday, i.e. on 19.09.2016, the learned counsel, Ms.Meenal was ready to advance her arguments. But, on the other hand, there is no representation on behalf of the respondent despite service of notice. Only on this reason, this Civil Revision was ordered to be listed today. Even today also, there is no representation for the respondent.

3. The fair and decreetal order dated 04.04.2012 made in I.A.No.121 of 2012 in the suit in O.S.No.43 of 2010 are under challenge in this memorandum of Civil Revision.

4. Heard Ms.R.Meenal, learned counsel for the petitioner. Perused the grounds of revision along with other materials including the impugned order passed by the Trial Court. Having taken into consideration all the relevant facts and circumstances, the impugned Order has been passed.

5. It is obvious to note here that the respondent being the plaintiff had filed the suit in O.S.No.43 of 2010 on the file of the learned Principal District Munsif, Villupuram and thereby sought the relief of bare injunction as against the first petitioner herein. The second petitioner is none other than the wife

of the first petitioner. In the said suit, the respondent had filed a written statement saying that the suit property was purchased by his wife and after her purchase, she had put up a construction along with a compound wall around the house property including a bore well and lavatory and as such she had been in possession and enjoyment of the suit property. Further, he has contended that since his wife had been in enjoyment of the property for more than 30 years, she had prescribed even adverse possession also and therefore, the suit for bare injunction is not at all maintainable. Based upon the written statement of the first petitioner/1st defendant, the respondent herein had taken out an application in I.A.No.121 of 2012 under Order I Rule 10(2) of the Code of Civil Procedure to implead the second revision petitioner as one of the defendants in the suit. This petition was strenuously contested on two grounds:

(a) The respondent herein, who is the plaintiff had filed the suit without exactly knowing his own property.

(b) No cause of action arose for the impleadment of the second petitioner.

6. However, the learned Trial Judge in his impugned Order has observed that even though the property stands in the name of his wife, the first revision petitioner alone had been maintaining the property and therefore, it won't be an obstacle to implead the second petitioner/second respondent as one of the defendants in the suit. Based on this observation, she had proceeded to allow the said petition.

7. This Court has perused the impugned order along with the grounds of the revision and find that the Order of the Trial Court itself seems to be perverse in nature because the learned Trial Judge has not approached the real issue which is involved in the impleadment petition with proper perspective which resulted in wrong decision. Therefore, this Court finds that the petition in I.A.No.121 of 2012 itself is not maintainable as against the second petitioner, Padmavathy, who is the wife of the first petitioner. On this ground, the revision is deserved to be allowed .

8. Accordingly, this Civil Revision Petition is allowed and the impugned Order dated 04.04.2012 is set aside and the petition in I.A.No.121 of 2012 is dismissed. The learned Trial Judge is directed to dispose the suit in O.S.No.43

of 2010 on merits within a period of two months from the date of receipt of a copy of this Order. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

20.09.2016

Index:yes/no
Internet:yes

vrc

To
The Principal District Munsif,
Villupuram.

T.MATHIVANAN, J.,

vrc

C.R.P.(PD) No.3295 of 2012

20.09.2016