

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.830 of 2012

and

M.P.No.1 of 2012

Gopalsamy

.. Petitioner

Vs

1.Mani

2.Sathishkumar

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.09.2011 made in I.A.No.643 of 2011 in I.A.No.846 of 2010 in O.S.No.245 of 2010 on the file of the Subordinate Court, Dharapuram.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.N.Manokaran (For R1)
No appearance (For R2)

ORDER

The Civil Revision Petition is filed against the order dated 19.09.2011 made in I.A.No.643 of 2011 in I.A.No.846 of 2010 in O.S.No.245 of 2010 on the file of the Subordinate Court, Dharapuram.

2.The petitioner herein as a plaintiff filed a suit in O.S.No.245 of 2010 for recovery of money due on a promissory note dated 03.11.2008 for Rs.2,50,000/- against the first respondent/defendant. The petitioner/plaintiff has also filed an application under Order 38 Rule 5 of CPC in I.A.No.846 of 2010 for attachment. During the pendency of the application, the proposed second defendant/second respondent herein has purchased the property and filed an application in I.A.No.643 of 2011 to implead himself as a party to the proceedings. Since the plaintiff/petitioner herein has not filed any counter to the application, he was set exparte and the said application was allowed. Against which, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioner would submit that an opportunity must be given to him to file his counter and thereafter, decide the matter on merits. Hence, he prays for setting aside the impugned order passed by the Trial Court.

4.At this juncture, the learned counsel appearing for the first respondent would submit that the second respondent has purchased the property and so, he is entitled to implead himself as party to the proceedings.

For that reason, he has also relied upon the decision reported in **2014 (4) CTC 814 (V.L.Dhandapani and others vs. Revathy Ramachandran and others)**.

He would further submit that even though the second respondent is a *pendente lite* purchaser, he is entitled to agitate the matter. Hence, he prays for dismissal of this revision petition.

5.Considered the rival submissions made by both sides and perused the typed set of papers.

6.On perusal of the impugned order, it is seen that it is cryptic in nature since the said application was allowed for non-filing of the counter by the plaintiff/petitioner herein. In such circumstances, I am of the view that it is a fit case to set aside the impugned order passed by the Trial Court. Hence, the impugned order in I.A.No.643 of 2011 in I.A.No.846 of 2010 in O.S.No.245 of 2010 is hereby set aside and the matter is remitted back to the Trial Court. The petitioner is directed to file his counter in I.A.No.643 of 2011 within a period of fifteen days from the date of receipt of a copy of this order and the Trial Court is directed to dispose of I.A.No.643 of 2011 within a period of one month thereafter.

R.MALA. J.,

cse

7.In the result, the Civil Revision Petition is disposed of. No costs.
Consequently, connected Miscellaneous Petition is closed.

29.07.2016

Index: Yes/No

Internet: Yes/No

cse

Note: Issue order copy on 01.08.2016

To

The Subordinate Court, Dharapuram.

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