



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD) No.2432 of 2015(PD)

and

M.P(MD)No.1 & 2 of 2015

R.Jeya Vimala

.. Petitioner

vs.

1.Krishnakumar

2.N.Murugan

3.Usha

4.Thara Ramesan

.. Respondents

Prayer: This Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order in I.A.No.1279 of 2014 in O.S.No.103/2009 on the file of the Principal District Munsif Court, Padmanabhapuram, dated 29.07.2015.

For Petitioner : Mr.S.Ramesh

JUDGMENT

Being aggrieved over the fair and decretal order, dated 29.07.2015 in I.A.No.1279 of 2014 in O.S.No.103/2009 passed by the Principal District Munsif Court, Padmanabhapuram, the petitioner has filed this Revision.

2.The petitioner is the plaintiff in O.S.No.103 of 2009 on the file of the learned Principal District Munsif, Padmanabhapuram. She filed a Suit for permanent injunction restraining the respondents 1 to 3 herein from interfering with her possession and enjoyment of suit prayer.

3. According to the petitioner, she purchased the suit property from on Thara, D/o. Padmanaban Thambi. The title of Padmanaban Thambi was confirmed in the judgment and decree in O.S.No.35 of 1973, on the file of District Munsif, Padmanabhapuram. After death of the said Padmanabhan Thambi, his only daughter Thara inherited the same. From her, the petitioner purchased the property by sale deed, dated 17.06.2005. The



respondents 1 to 3 tried to interfere with possession of petitioner and therefore, she filed a Suit in O.S.No.103 of 2009, for permanent injunction.

4. The respondents 1 to 3 in their written statement stated that the said Padmanaban Thambi sold the Suit property to one Thivakaran Nair on 30.10.1987. The said Thivakaran Nair sold 40 cents of the land to the 2nd respondent on 20.09.1993.

5. The petitioner filed I.A.No.1279 of 2014 for impleading 4th respondent, Thara daughter of Padmanabha Thambi as 4th defendant in the suit. The 4th respondent is the vendor of the petitioner. According to the petitioner, the 4th respondent is necessary and proper party to prove the title of petitioner and also to prove that the respondents 1 to 3 have not obtained any title to the suit property. The respondents 1 to 3 filed counter affidavit and submitted that respondent No.4 is neither a necessary nor proper party to the suit.

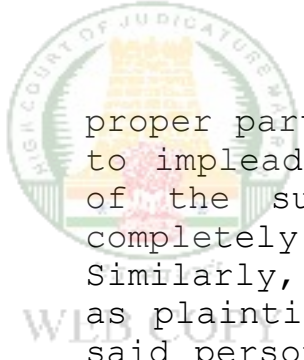
6. The 4th respondent in her counter affidavit submitted that she is neither necessary nor proper party to the suit and it is for the respondents 1 to 3 to prove the genuineness of the sale deeds which are executed outside the jurisdiction of Office of Sub-Registrar within whose jurisdiction, the property is situate.

7. The learned Judge considering all the materials, arguments of counsel for parties and Judgements relied on by counsel for parties dismissed the appeal. Against the said order of dismissal, dated 29.07.2015, the present Civil Revision Petition is filed.

8. The learned counsel for the petitioner submitted that respondent No.4 is necessary party to decide the issue in the suit. The learned Judge failed to see that the judgment reported in **2006(4) MLJ 593** is not applicable to the facts of the present case. The learned Judge ought to have seen that respondent No.4 is a necessary party to effectively and completely adjudicate the issue on the principle that possession follows title.

9. I have heard the learned counsel appearing for the parties and perused the materials available on record.

10. The petitioner is seeking to implead respondent No.4, as 4th defendant in the Suit. Respondent No.4 is the vendor of the petitioner. According to the petitioner, respondent No.4 is a necessary and proper party to prove the title of petitioner and to disprove the claim of respondents 1 to 3 that Padmanabhan Thambi sold the property during his life time itself. Both respondents 1 to 3 and Respondent No.4 have filed separate counter affidavits and stated that respondent No.4 is not a necessary and



proper party. As per Order I Rule 10(2) CPC., the Court has power to implead any person, as a plaintiff or defendant, at any stage of the suit, whose presence is necessary to effectively and completely adjudicate all the questions involved in the suit. Similarly, the Court has power to strike out any person impleaded as plaintiff or defendant, if the Court is of the opinion of the said person is improperly joined as party in the suit. In number of judgments the terms necessary party and proper party have been explained. A necessary party is a person without whose presence the issue in the suit cannot be effectively and properly adjudicated. A proper party is one whose presence is necessary for complete and final decision of the questions involved in the proceedings.

11. The petitioner has filed the Suit for permanent injunction. In the circumstances, the respondent No.4 is not a necessary or proper party to the suit to decide the issue in the suit as petitioner seeks to prove her title through fourth respondent. A person may be a necessary witness to decide the issue in question, but he need not be necessary party to the suit. In the present case, the learned Judge has properly appreciated all the materials on record and also the judgments reported in **1998 (1) MLJ 562; 1992 TLNJ(SC) 14 and 2006 (4) MLJ 593** and dismissed the application. The learned Judge has given proper and valid reasons for dismissing the application. He has exercised the power conferred on him. There is no infirmity, irregularity or illegality in the said order warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Padmanabhapuram.

+ 1 CC TO MR.V.RAGHAVACHARI, ADVOCATE IN SR No. 19098

AM

TE/SKS-RR/SAR-I :09/06/2016:3P/3C

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