



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.2598 of 2016 and

CMP(MD).NO.12259 of 2016

Mayandi Thevar

Revision Petitioner/Pettitioner/
Proposed 6th Defendant

Vs.

1. Jeyaraman
2. Dhanapandiammal
3. Minor Jayaprabha
4. Minor Parathkumar
5. Minor Nanthini
(respondents 3 to 5 are represented by their
mother and Natural Guardian for the 2nd Respondent herein)

6. Rameshkumar
Respondents 2 to 6/
Respondent 2 to 6/Defendants 1 to 5

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and dismissal passed in I.A.No. 523 of 2012 in O.S.No. 670 of 2008 dated 619/2016 on the file of the Additional District Munsif Court, Dindigul.

For Petitioner : Ms. S.Vijayshanthi

O R D E R

This Civil Revision Petition is filed against the order of dismissal passed in I.A.No. 523 of 2012 in O.S.No. 670 of 2008 on the file of the Additional District Munsif Court, Dindigul.

2. The petitioner is the third party to the suit in O.S.No.670 of 2008 on the file of the Additional District Munsif, Dindigul filed by the first respondent against the respondents 2 to 5 for recovery of possession. The petitioner filed I.A.No.523 of 2012 for impleading him as 6th defendant in the said suit. According to the petitioner, the suit property was allotted to one Pandi in partition and after his death the respondents 2 to 5 inherited the said property as legal heirs of Pandi. The second respondent of Attorney in favour of one Balusamy Thevar as power agent and sold the property to sixth respondent herein. From 6th respondent, the petitioner purchased the property and he



is in possession and enjoyment of the said property name has been mutated in revenue records and therefore, he is the necessary party.

3. The first respondent filed counter and opposed the said application and submitted that he purchased the property in Court auction in E.P filed for attachment and sale of properties of Pandi on 08.01.2003 and the Execution Court issued sale certificate by order dated 21.04.2003. The respondents 2 to 5 did not hand over the possession and filed number of applications to obstruct the delivery to the first respondent. Therefore, the first respondent filed suit for recovery of possession. The petitioner is the brother in law of second respondent and paternal uncle of the respondents 3 to 5 and they were colluded together and created documents. The petitioner purchased the suit property only on 20.04.2010 pending suit in O.S.No.670 of 2008 filed by the first respondent. The petitioner filed O.S.No. 244 of 2011 for declaration and injunction. The first respondent filed Civil Revision Petition to strike of the plaint in O.S.244 of 2011 and the same is pending. No evidence was let in. Ten documents were marked as Exs.P1 to P10 on the side of the petitioner and Exs.R1 to R6 were marked on the side of the first respondent. The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record and documents relied on by the parties dismissed the application holding that the petitioner has purchased the property pending suit and his vendor is already party to the suit and the petitioner purchased only on 20.04.2010 pending suit and filed suit in O.S.No. 244 of 2011 for declaration and injunction and therefore, not a necessary party. Against the said order of dismissal, the present Civil Revision Petition has been filed.

4. The learned Counsel appearing for the petitioner submitted that the petitioner purchased the property from land owner and he is in possession and enjoyment of the property. Therefore, he is necessary and proper party to the suit. The learned Judge failed to consider that the first respondent has filed Civil Revision Petition in CRP(MD).No. 1878 of 2014 to strike off the plaint in O.S.No.244 of 2011 filed by the petitioner and there is no interim order granted in the Civil Revision Petition. The learned Judge failed to see that the said Pandi was not absolute owner of the suit property and he was not owner of the property on the date attachment of the property and when it was sold to the first respondent.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. The first respondent has filed suit in O.S.No.670 of 2008 for delivery of possession. The first respondent has stated that he purchased the suit property in the Court auction in the EP



filed against one Pandi. The respondents 2 to 6 obstructed taking possession and therefore, first respondent filed O.S.No. 670 of 2008 for recovery of possession.

7. It is seen from the affidavit filed by the petitioner for impleading him as 6th respondent that he purchased the suit property on 20.04.2010 pending suit in O.S.No.244 of 2011. His vendor is party to the said suit. After purchase the properties, the petitioner filed O.S.No. 244 of 2011 for declaration and injunction. The allegation of first respondent is that petitioner is the brother in law and paternal uncle of the respondents 3 to 5 is not denied by the petitioner and other respondents .

8. In view of the fact that the petitioner purchased the suit property pending suit and already filed O.S.No.244 of 2011 for declaration and injunction, the learned Judge has rightly held that the petitioner is not a necessary and proper party to the suit. Further, the learned Judge has considered all these facts in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. The learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

9. In the result, the Civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif , Dindigul.

Copy to
The Section Officer, VR Section.
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Hariharan, Advocate sr no 83135
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