

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) No.1526 of 2017
and
C.M.P No.7105 of 2017

Mr. T.P. Gopalakrishnan

... Petitioner

vs.

1. Mr. M. Hariharan

2. Mrs. Baby

3. Mr. Mohan

4. Mrs. Kala

...Respondents

Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the Judgment and decree dated 10.01.2017 made in C.M.A. No.9 of 2015 on the file of Learned Sub Judge at Tambaram, confirming the fair and decreetal order dated 19.06.2015 made in E.A. No.204/2012 in E.P No.49/2010 in O.S. No.392/1997 on the file of the Principal District Munsif Court, Alandur.

For Petitioner : Mr. T. Ramachandran

ORDER

This Civil Revision Petition arises against the Judgment and decree dated 10.01.2017 made in C.M.A. No.9 of 2015 on the file of Learned Sub Judge at Tambaram, confirming the fair and decreetal order dated 19.06.2015 made in E.A. No.204/2012 in E.P No.49/2010 in O.S. No.392/1997 on the file of the Principal District Munsif Court, Alandur.

2. Learned counsel for the petitioner would submit that the petitioner is a third party/ claimant to the property measuring 1722 sq.ft. comprised in S.No.68 and 69 situated at Plot No. 73A, 2nd Main Road, Sadasivam Nagar at Madipakkam Village and the petitioner is in peaceful possession and enjoyment of the same, as an absolute owner. According to the petitioner, he has purchased a portion of the property measuring 1722 sq.ft., under a registered sale deed dated 11.10.2006 vide Document No. 4807/2006. In the aforesaid property, the claim petitioner has constructed a residential house, based on an approved plan and is paying the necessary taxes. When the petitioner applied for mutation of his name in the revenue records, pursuant to the valid documents executed in his favour, he came to know about the suit and pendency of the execution

proceedings.

3. According to the petitioner, the property claimed by the decree holder is absolutely different and it is not the property owned by him. He further states that the property is owned by the claim petitioner and under wrong identity the decree holders are trying to execute the decree against his property, for which they are not entitled. Hence, the petitioner has filed a Third Party Claim Petition in E.A. No.204/2012 in E.P. No.49/2010 in O.S. No. 392 of 2007 before the Principal District Munsif, Alandur. Since the said petition was dismissed by the Lower Court, the present revision petition is filed.

4. Heard learned counsel for the petitioner and perused the materials available on records.

5. It is an undisputed fact that one of the decree holder, namely Kala, the vendor of the claim petitioner, is the defendant in O.S. No. 392 of 2007. While contesting the suit, the counsel appearing for the defendants in the suit has raised the ground that there is a wrong identification of the property. But, the Court below has rejected the said contention. Considering the oral and documentary evidences, the said suit was

decreed. The claim petition has been filed by the petitioner, as a purchaser of the subject property, from the aforesaid Kala. The grievance of the petitioner is that the subject property belonging to the respondents are different and therefore execution petition filed by the decree holders cannot be executed. It is an admitted fact that the petitioner has filed a suit in O.S. No. 778 of 2015 before the District Munsif, Alandur. In the aforesaid suit, the petitioner has also filed an application for interim injunction and the same is pending before the lower court. The said suit has been filed subsequently, by the claim petitioner stating that the property for which the right is claimed, is situated at Plot No.73. The said issue was already agitated by the petitioner and the same was negated in the earlier suit. The claim petitioner has no independent claim over the property and cannot prevent the respondents from the same. Admittedly, the petitioner has not filed any revenue records before the Court below to establish his contention as submitted in the application. Further, the petitioner has also filed a suit in O.S. No.778 of 2015 and the same is pending before the District Munsif Court, Alandur.

6. In view of the above facts, this Court is not inclined to interfere with the orders of the Lower Court. However, this order will not stand on

the way of the petitioner to agitate the suit in O.S. No. 778 of 2015 and I.A. No.1096 of 2015, which is now pending before the District Munsif Court, Alandur.

7. At this stage, learned counsel for the petitioner requested this Court to issue a direction to the court below, to dispose of the said Application in I.A. No.1096 of 2015 now pending before the District Munsif Court, Alandur within a time frame, in the interest of justice. The said suit or the application is not the subject matter of the present revision petition. However, taking into consideration the above facts of the case, and the request made by the learned counsel for the petitioner to dispose of the case within a stipulated time, the learned Munsif, Alandur shall consider the request of the petitioner to dispose of the application and pass orders on the said application, as expeditiously as possible.

8. In view of the above said facts, as there is no error or illegality in the order dated 10.01.2017 passed in C.M.A. No.9 of 2015, by the Sub Judge, Tambaram, this Civil Revision Petition is dismissed, with the above observation at the stage of admission itself. Consequently, the Connected Miscellaneous Petition is closed. No order as to costs.

01.06.2017

Index : yes / no

Speaking Order/ Non speaking order

[Issue order copy on 05.06.2017]

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To

1. The Sub Court, Tambaram.
2. The Principal District Munsif Court, Alandur

D.KRISHNAKUMAR, J.

avr

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