

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1536 of 2017
and CMP.No.7134 of 2017

1.Varadaraju
2.Kuppusamy

.. Petitioners

Vs

1.Gowri
2.Sekar
3.Murugan

..Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the fair and decretal order dated 12.01.2017 made in I.A.No.736 of 2016 in O.S.No.152 of 2011 on the file of the District Munsif Court, Palacode.

For Petitioner : Ms.V.R.Annagandhi

ORDER

The petitioners have filed the Civil Revision Petition to set aside the fair and decretal order dated 12.01.2017 made in I.A.No.736 of 2016 in O.S.No.152 of 2011 on the file of the District Munsif Court, Palacode.

2. The petitioners are the proposed parties in the suit. The first respondent is the plaintiff and the respondents 2 and 3 are the defendants in the suit. The suit in O.S.No.152 of 2011 on the file of District Munsif Court, Palacode was filed by the plaintiff for permanent injunction against the defendants/respondents 1 and 2 herein.

3. According to the petitioners, the suit property is the ancestral property, which originally belonged to one Pachiammal, the mother of the petitioners. The said Pachiammal had 4 sons viz., the petitioners and the respondents 2 and 3 herein. It is stated by the petitioners that the respondents 2 and 3 have executed a conditional sale deed in favour of the 1st respondent/plaintiff without consulting the petitioners herein. According to the petitioners, they are also the owners of the suit property and they are the necessary and proper parties to contest the suit. Therefore, the petitioners have filed an application in I.A.No.736 of 2016 under Order I Rule 10 of CPC to implead themselves as proposed defendants in the said suit.

4. The first respondent/plaintiff filed counter and denied the averments made by the petitioners.

5. The learned Judge dismissed the application in I.A.No.736 of 2016 holding that the suit filed by the first respondent is for permanent injunction against the respondents 2 and 3, and that the first respondent has to prove her possession in order to obtain a decree of permanent injunction against the persons who tried to interfere with the possession of the first respondent/plaintiff. Against the said order of dismissal in I.A.No.736 of 2016, the petitioners have filed the present Civil Revision Petition.

6. Heard the learned counsel for the petitioners and perused the materials on record.

7. The suit filed by the first respondent/plaintiff is only for permanent injunction. The suit was not filed to decide the title of the first respondent/plaintiff in the suit schedule property, and the only issue to be decided in the suit is whether the first respondent is in possession of the suit property, and the respondents 2 and 3 are interfering with the possession of the first respondent. To decide this issue, even if the proposed parties are the owners of the suit property, they are not the necessary parties and first respondent/plaintiff has not stated that they are interfering with the

possession of the first respondent/plaintiff. Under the said circumstances, the application in I.A.No.736 of 2016 filed by the petitioners to implead them as proposed defendants is not maintainable.

8. In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

25.04.2017

ds

Speaking order/Non-speaking order
Index : Yes/No

To:
The District Munsif Court,
Palacode.

V.M.VELUMANI,J

ds

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