

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.167 of 2014
& M.P.No.1 of 2014

Ramesh

.. Petitioner

Vs.

1.Vattu
2.Pattu

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.11.2013 made in I.A.No.658 of 2013 in O.S.No.449 of 2011 on the file of the Additional District Munsif Court, Chengam.

For Petitioner : Mr.P.Mani

For RR1 & 2 : No appearance

ORDER

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This Civil Revision Petition has been filed against the fair and decretal order dated 20.11.2013 made in I.A.No.658 of 2013 in O.S.No.449 of 2011 on the file of the Additional District Munsif Court, Chengam.

2.The petitioner is the plaintiff and respondents are defendants in O.S.No.449 of 2011. The petitioner filed the said suit for declaration and permanent injunction. The respondent filed written statement on 17.10.2011 and are contesting the matter. The petitioner filed I.A.No.658 of 2013 for amendment of the plaint to include the relief of recovery of possession of 'B' Schedule property. According to the petitioner, after filing of the suit, the respondents were giving number of petitions to Revenue Officials and Inspector of Police, Land Grabbing Cell. The petitioners and his family members have filed Criminal Petition in this Court, in No.25083 of 2012. This Court, by the order dated 19.10.2012, directed the petitioner to appear for enquiry before the respondents therein as and when required and also directed the respondents to complete the enquiry within 8 weeks. In the mean time, on 12.09.2012, the respondents trespassed into portion of the suit property with the help of police and they refused to vacate and handover the portion trespassed by them. In the circumstances, the petitioner filed the application for amendment to include the relief of recovery of possession.

3.The respondents filed counter affidavit and denied all the allegations and submitted that they are owner of the property even before filing of the suit and they are in possession and enjoyment of the suit property. Thus, there is no provision for amendment of the plaint to include the relief sought for.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application, holding that the suit mentioned property was included in the sale deed dated 06.03.2013 and petitioner has not executed the sale deed in favour of the respondents, under threat of police.

5.Against the said order dated 20.11.2013, made in I.A.No.658 of 2013 in O.S.No.449 of 2011, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner and perused the materials available on record. Though respondents entered appearance through counsel, there is no representation either in person or through counsel.

7. From the materials available on record, it is seen that the petitioners have filed the suit for declaration and injunction in respect of the suit property. According to the petitioner, pending suit, the respondents trespassed into the portion of the property on 12.09.2013 with the help of police and occupied a portion of the suit property. The portion occupied by the respondents was mentioned in the 'B' Schedule property. The respondents took stand in the written statement that they are in possession of the suit property even before filing of the suit. Further, the respondents have contended that the petitioner, his father and his paternal grand father sold 0.97 cents of land by the sale deed dated 06.03.2013 to one Sivanandham. Even that portion sold by them is in the possession of the respondents. The said sale deed is not binding on them. The contention of the petitioner that respondents have trespassed into the portion of the property on 12.09.2013 is correct or not, or whether the respondents are in possession of the suit property even before filing of the suit can be decided only by appreciating the evidence let in by the parties at the time of trial. The learned Judge without considering these facts, dismissed the application on the ground that the petitioner, his father and his

paternal grand father sold the property by the sale deed dated 06.03.2013 to one Sivanandham and petitioner did not execute the sale deed in favour of the respondents under a threat from the police. This reasoning for dismissing the application is erroneous. The issue to be decided is whether the respondents have trespassed into the suit property pending suit and whether the petitioner is entitled to recovery of possession of the said portion. For the above reasons, the order of the learned Judge is set aside.

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

24.11.2017

Index: Yes/No

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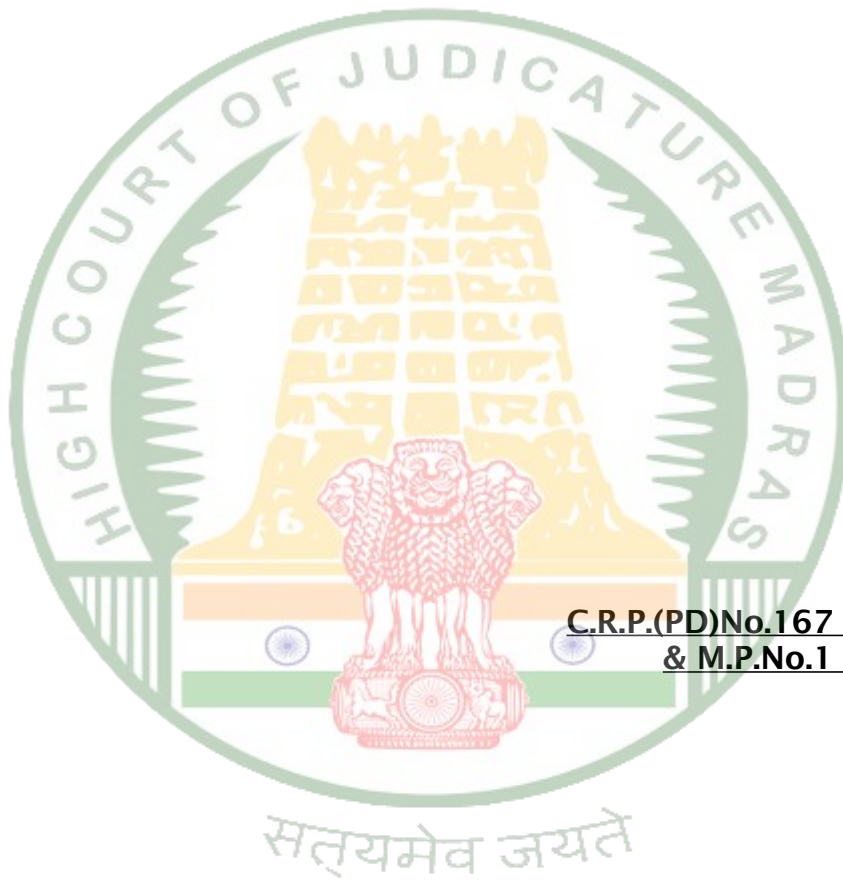
To

The Additional District Munsif,
Chengam.

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V.M.VELUMANI,J.

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