

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.187 of 2017
and
C.M.P.No.781 of 2017

Subramanian

.. Petitioner

vs

Kavitha

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 16.09.2016 passed by the learned Subordinate Judge, Attur in CMA No.5 of 2014 in confirming the fair and final order dated 12.06.2014 passed by the learned District Munsif, Attur in I.A.No.346 of 2012 in O.S.No.66 of 2012.

For Petitioner : Mr.T.Murugamanickam

ORDER

The plaintiff is the revision petitioner. The revision is directed against the orders refusing to grant injunction concurrently, by both the Courts below.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suit.

3. The case of the plaintiff is as follows:

The revision petitioner/plaintiff filed the suit in O.S.No.66 of 2012 as against the respondent/defendant for declaration of title and for a permanent injunction. According to the plaintiff, he is the absolute owner of the suit property having purchased the same from one Arunachalam, the father of the defendant. Since the vendor of the plaintiff created disturbances, he filed a suit in O.S.No.44 of 1997 for the relief of permanent injunction and got a decree on 10.02.1997. As the vendor Arunachalam refused to execute the sale deed, he once again filed a suit for specific performance in O.S.No.137 of 1998 before the Sub Court, Attur against the said Arunachalam and got a decree. The sale deed was executed through Court on 29.09.2000. It is

his further case that mutation has been effected in all the revenue records by incorporating the name of the plaintiff in patta, chitta and adangal and kist receipts. The defendant, who has got no right or title over the suit property came to the suit property on 17.03.2012 and tried to measure the same with the help of the Court Commissioner and Surveyor and the local Village Administrative Officer. It was stated by them that there was a decree for partition obtained by the defendant, pursuant to which, the Commissioner had come to the suit property. The case of the plaintiff is that he is not a party to the proceedings of the said partition suit filed by the defendant. Hence, the said partition decree is not binding on him, as he is in possession of the suit property. Therefore, he filed an application in I.A. No.346 of 2012 seeking injunction as against the defendant.

3. The said application was resisted by the respondent/defendant by contending that the mother of the defendant filed a suit in O.S.No.283 of 1990 seeking partition

and separate possession, when she was a minor and got a decree on 22.03.1991 and therefore, the decree obtained by the plaintiff in O.S.No.137 of 1998 is not binding on her. It is further stated that the plaintiff was also put on notice about the decree passed in O.S.No.283 of 1990 through registered notice dated 31.08.2004, but, he has not taken any steps to implead himself as a party in the final decree proceedings. In such circumstances, the present suit filed by the plaintiff, is only an abuse of process of law to stop the legal proceedings initiated by the defendant in O.S.No.283 of 1990.

4. The trial Court, after considering the arguments advanced on both sides, had dismissed the application. Aggrieved by the same, the plaintiff preferred an appeal in CMA No.5 of 2014 before the Sub Court, Attur for nothing but to be dismissed by the Appellate Court confirming the order passed by the trial court.

5. Challenging the concurrent finding given by both the

Courts below in refusing to grant injunction, the above revision is preferred.

6. The revision petitioner/plaintiff had entered into a sale agreement with the defendant's father based on which the suit in OS No.137 of 1998 was filed against him for specific performance; got a decree in the year 2000 and also got the sale deed executed through Court. The defendant's mother also had filed O.S.No.283 of 1990 for partition wherein the preliminary decree was passed in the year 1991. I.A.No.770 of 2005 was filed by the defendant for passing of the final decree, which is pending. As per the preliminary decree, half share was declared in favour of the defendant, by which she also becomes the owner of the suit property. As the defendant is the joint owner by virtue of a decree, there cannot be an injunction against the co-owner. Hence, the Courts below refused to grant injunction. Even presuming that the plaintiff is the absolute owner of the suit property he could have

impleaded himself in the final decree proceedings or taken an action under Section 47 of the Code of Civil Procedure, but he has filed a separate suit seeking injunction.

7. Considering the aforesaid facts and circumstances of the case, both the Courts below have refused to grant an injunction in favour of the plaintiff, warranting no interference in this revision. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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vj2

Index: yes/No

Internet: yes

To

1. The Subordinate Judge, Attur
2. The District Munsif, Attur

PUSHPA SATHYANARAYANA,J.,

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