

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.2138 OF 2017
AND CMP NO.10246 OF 2017

Ramathilagam

... Petitioner

Vs.

1.P.J.Johnson

2.P.J.Tites

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.04.2017 passed in I.A.No.39 of 2017 in O.S.No.218 of 2014 on the file of Additional District Munsif Court at Poonamallee.

For Petitioner : Mr.G.Dilip Kumar

WEB COPY
ORDER

This Civil Revision Petition is preferred against the order of the learned Additional District Munsif, Poonamallee, passed in I.A.No.39 of 2017 in O.S.No.218 of 2014, dated 26.04.2017.

2. The petitioner before this Court has filed an interlocutory application under Order 1 Rule 10 of the Civil Procedure Code for impleading the second respondent herein as a party to the suit. In the affidavit, it was stated that in the written statement dated 07.10.2014 filed by the defendant / first respondent, it was stated that he had settled the property in favour of his son, who is the second respondent herein. Therefore, he has filed the interlocutory application on 23.01.2017 for impleading the son of the defendant/first respondent, as proposed respondent / defendant.

3. From a perusal of the pleadings, it is seen that the suit was filed for relief of permanent injunction restraining the defendant, his men, servants and agents from interfering with the peaceful possession and enjoyment of the suit property. The cause of action was stated to be on 02.04.2014, when the defendant started to disturb the plaintiff's possession. Further, it is seen that the petitioner / plaintiff claims title through a sale deed dated 03.06.1987, which is supported by the electricity bill in the name of the petitioner / plaintiff. No other document has been filed.

4. Learned counsel for the petitioner would submit that the Trial Court, on misconception that the petition is filed for dragging on the proceedings, dismissed the petition, which is erroneous.

5. On the other hand, from the pleadings, I could infer that the defendant had purchased the property on 27.11.1985, by way of a registered document No.6820/1985, and had settled the property in favour of his son, on 29.07.2013, by way of a gift deed, which was registered as document No.9410/2013. Subsequently, the petitioner has purchased the property by way of a sale deed dated 03.06.1987. While he filed the suit on 24.04.2014, the gift deed has already come into existence. As stated supra, the gift deed was registered on 29.07.2013. The petitioner / plaintiff being the *dominus litus*, he should have been aware of the status. When he claims that the cause of action arose only on the illegal act of defendant, it is not necessary to implead the legal representatives of the defendant. On the other hand, there is no cause of action against the proposed respondent / defendant, who is the second respondent herein. Furthermore, the written statement was filed on 10.10.2014 and after framing issues, the matter was posted for trial. P.W.1 is in the box for cross examination. At that stage, the

application for impleading the proposed respondent / defendant son, as the second respondent/defendant, came to be filed. The finding of the Trial Court was that it was belated and after three long years, after the written statement filed by the defendant. Therefore, the Trial Court has rightly come to a conclusion that the petition was filed for the purpose of dragging on the proceeding. There is no averments in the plaint against the proposed respondent, nor any cause of action revealed against him. Therefore, the finding of the Trial Court is very much correct and does not require any interference.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Index : Yes/No

Internet : Yes/No

TK

To

The Additional District Munsif Court
Poonamallee.

06.07.2017

WEB COPY

M.GOVINDARAJ, J.

TK



C.R.P.(PD) NO.2138 OF 2017

WEB COPY

06.07.2017