

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.25 of 2014
& M.P.No.1 of 2014

Savithiri

... Petitioner

Vs.

1.N.P.Ramasamy
2.Jagadeesh
3.Rukmani
4.N.R.Moorthy

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.09.2013 made in I.A.No.535 of 2013 in O.S.No.547 of 2009 on the file of the Principal District Munsif Court, Erode.

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For Petitioner	: Mr.S.Dhanasekaran
For R1 to R3	: Mr.N.Manokaran
For R4	: No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.09.2013 made in I.A.No.535 of 2013 in O.S.No.547 of 2009 on the file of the Principal District Munsif Court, Erode.

2. The petitioner is third party, the respondents 1 to 3 are the plaintiffs and fourth respondent is the defendant in O.S.No.547 of 2009. The respondents 1 to 3 filed said suit for permanent injunction against the fourth respondent. The fourth respondent filed O.S.No.729 of 2009 against the respondents 1 to 3 for partition. A joint trial was ordered and the respondents 1 to 3 let in evidence and closed their side. When the suit was posted for recording evidence on behalf of the fourth respondent, the fourth respondent took steps to summon the petitioner. At that time, on steps taken by the fourth respondent, summons were issued to the petitioner to give evidence on behalf of the fourth respondent. The petitioner appeared before the Court and thereafter, filed the present I.A.No.535 of 2013 under Order I Rule 10 C.P.C. for impleading herself as a party to the suit.

3. According to the petitioner, she purchased a portion of the

second item of the suit property from the respondents 1 to 3 measuring 40 X 40 feet and subsequently, sold 20 X 20 feet to one Ponnaiyan. At the time of purchase, fourth respondent objected to sell the property by the respondents 1 to 3 on the ground that the property can be sold only after partition. A Panchayat was held and it was decided in the Panchayat that at the time of partition, shares of the respondents 1 to 3 would be reduced in partition, in view of the sale by the respondents 1 to 3 to the petitioner. The respondents 1 to 3 filed suit for including portion of the property sold to the petitioner also. Therefore, she is necessary and proper party to the suit.

4. The respondents 1 to 3 filed counter affidavit and denied all the averments made in the affidavit filed in support of the above application. According to the respondents 1 to 3, the suit filed by them is only for permanent injunction against the fourth respondent. They are not seeking any relief against the petitioner and others and therefore, the petitioner is not necessary and proper party to the suit. The petitioner has filed the present application only at the instigation of the fourth respondent at the fag end of the trial with a view to prolong the issue. The first respondent is a

senior citizen and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, the reliefs sought for in the present suit and O.S.No.729 of 2009 filed by the fourth respondent against the respondents 1 to 3 for partition, dismissed the application filed by the petitioner for impleading herself as a party to the present suit holding that the petitioner is not necessary and proper party to the suit.

6. Against the said order of dismissal dated 24.09.2013 made in I.A.No.535 of 2013, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner as well as the respondents 1 to 3 and perused the materials available on record. Though notice was served on the fourth respondent and his name was printed in the cause list, there is no representation on behalf of him either in person or through counsel.

8. According to the petitioner, she has purchased portion of the suit property from the respondents 1 to 3 and therefore, she is necessary and proper party to the suit. The suit filed by the respondents 1 to 3 is against the fourth respondent for permanent injunction restraining the fourth respondent from interfering with their peaceful possession and enjoyment of the suit property including the property alleged to have been purchased by the petitioner. The respondents 1 to 3 denied having sold the portion of the suit property to the petitioner and submitted that only at the instigation of the fourth respondent, the petitioner has come out with the present application. The fourth respondent in the suit filed by him in O.S.No.729 of 2009 for partition did not include the property alleged to have been purchased by the petitioner.

9. In a suit for injunction, it is for the plaintiff to prove his possession and that the defendant is trying to interfere with his possession. In the present suit, respondents 1 to 3 have not alleged that the petitioner is interfering with their possession and they have not claimed any relief against the petitioner. In the circumstances, the learned Judge has rightly held that any decree passed in the suit in favour of the respondents 1 to 3 will not be binding on the

petitioner and in a suit for injunction, when no relief is sought against the petitioner, she is not necessary and proper party to the suit. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge dated 24.09.2013.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.11.2017

Index : Yes/No
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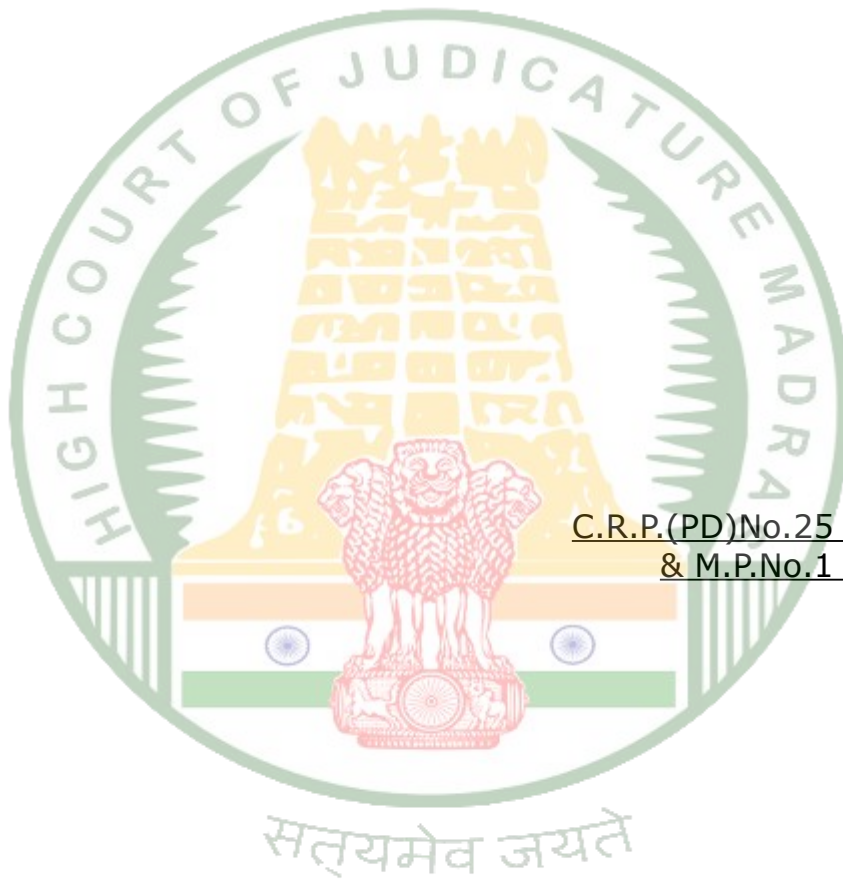
To

The Principal District Munsif, Erode.

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V.M.VELUMANI, J.

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