

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.507 of 2017
and
C.M.P.Nos.2510 & 2511 of 2017

Ganesan
S/o.Balakrishnan

..Petitioner/Petitioner/3rd Party

-Vs.-

1.V.S.Dhandapani

2.Gireesan

3.Sundar

4.Raji @ Durgambal

5.Sulochana

6.Ramajayam

7.Manimegalai

8.Alamelu

9.Mohan

10.Jambagam

11.Dharmambal

..Respondents/Respondents/ Respondents

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decretal order of the learned Additional Subordinate Judge, Tiruvannamalai, dated 26.04.2016 made in I.A.No.201 of 2016 in I.A.No.115 of 2009 in O.S.No.116 of 1986.

For Petitioner : Mr.W.M.Abdul Majeed

ORDER

The present Civil Revision Petition has been filed challenging the fair and decretal order dated 26.04.2016 made in I.A.No.201 of 2016 in I.A.No.115 of 2009 in O.S.No.116 of 1986 on the file of the learned Additional Subordinate Judge, Tiruvannamalai, wherein the petition filed under Order 1 Rule 10(2) CPC came to be dismissed.

2.The learned counsel appearing for the petitioner would submit that one Jayalakshmi has filed the suit in O.S.No.116 of 1986 for partition and separate possession of 1/2 share in the suit property. However, the preliminary decree was passed only in respect of 1/3 share in the suit property against which the defendants therein filed an appeal in A.S.No.425 of 1992 for which

the plaintiff filed cross objection No.56 of 2005. During the pendency of the proceedings, the plaintiff died. However, she had executed a Will in favour of one of her son, viz., Dhandapani. After contest, it was held that the said Dhandapani is entitled to 1/2 share in the suit property. Further, in the decree in A.S.No.425 of 1992, it has been specifically stated that the cross objector in memo of Cross Objection/6th respondent in the Appeal is entitled for 1/2 share of the suit property. The same was also confirmed by the Hon'ble Apex Court in SLP (Civil) No.20216-17/2009. Now, the said Dhandapani has filed a final decree application in I.A.No.115 of 2009 and the same is pending.

3.The learned counsel for the revision petitioner would further submit that the petitioner had entered into a sale agreement with Dhandapani and had paid the sale consideration on various dates. Even after payment of the sale consideration, the said Dhandapani did not execute the sale deed in favour of the revision petitioner and hence, the revision petitioner was constrained to file a suit in O.S.No.3 of 2014 and the same is pending. While so, the revision petitioner had filed an application in I.A.No.201 of 2016 to implead himself as party to the proceedings in the final decree application in I.A.No.115 of 2009. The said application was dismissed by the Trial Court and as against the said order, the present Civil Revision Petition has been preferred.

4.The learned counsel for the revision petitioner would further submit that the learned Trial Judge in paragraphs 11 and 12 of the order has stated that the revision petitioner had not filed any scrap of papers to prove the existence of the alleged sale agreement. Furthermore, it was held therein that the alleged agreement of sale will not confer any right or interest to the petitioner as a necessary party to the adjudication of final decree application.

5.Considered the submissions made by the learned counsel for the revision petitioner and perused the typed set of papers.

6.The only issue involved is that the agreement holder wants to implead himself as a party in the final decree proceedings. It is a well settled dictum that the agreement holder is not having any right or interest over the property. In the instant case, the final decree application alone is pending. Only in the final decree proceedings the portion of property to be allotted to Dhandapani will be decided and only after taking possession of the property, the said Dhandapani will have the right and title over the property. Furthermore, the right conferred on a subsequent purchaser is entirely different from that of the right conferred on the agreement holder. The right of the agreement holder is only a inchoate title and he does not have any right

in the property. Only the subsequent purchaser will have the right to be impleaded, as he will step into the shoes of his vendor.

7. In such circumstances, I am of the considered view that the Trial Court had considered all these aspects in proper perspective and rightly dismissed the application preferred by the revision petitioner under Order 1 Rule 10(2) CPC. Hence, the Civil Revision Petition is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. No costs.

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