

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1149 and 1150 of 2012
& M.P.No.1 of 2012

R.Jayakumar
rep. By his Power agent,
A.Elumparuthy

.. Petitioner in
both C.R.Ps'

Vs.

1.P.J.Murali Chettiar

2.The Branch Manager
The Tamilnadu Industrial Investment
Corporation Limited, S.R.Division-1,
No.692 Anna Salai, Nandanam
Chennai 35,

.. Respondents
1 & 2 in both C.R.Ps'

3.R.Rajkumar
rep. By his Power Agent
G.Ramakrishnan

4.Managing Director,
The Tamilnadu Industrial Investment,
Corporation Ltd., Head Office,
No. 692 Anna Salai, Nandanam
Chennai 35.

.. Respondents
3 & 4 in C.R.P.No.1150/2012

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the orders and decretal orders dated 26.07.2011 made in I.A.Nos.1646 of 2010 and 441 of 2006 in

O.S.No.72 of 2006 on the file of the District Munsif, Chengalpattu.

For Petitioner : Mr.V.Shivalingam

For R1 : Mr.R.Ravikumar Paul, Senior Counsel
for M/s. Paul & Paul

For R2 : Mr.K.Magesh

COMMON ORDER

Both the Civil Revision Petitions are filed against the orders and decretal orders dated 26.07.2011 made in I.A.Nos.1646 of 2010 and 441 of 2006 in O.S.No.72 of 2006 on the file of the District Munsif, Chengalpattu.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same. Therefore, disposed of by this common order.

3.The petitioner in both the Civil Revision Petitions is the plaintiff, respondents 1 and 2 are the defendants in O.S.No.72 of 2006 on the file of the District Munsif, Chengalpattu. He filed the said suit against the respondents 1 and 2 for permanent injunction,

restraining the first respondent from alienating or encumbering the suit property. The second respondent was added as formal party and no relief is claimed against the second respondent. The first respondent filed written statement on 05.06.2006 and the second respondent filed written statement on 16.06.2006 and are contesting the suit. The petitioner filed I.A.No.441 of 2006 under Order 1 Rule 10 and Section 151 C.P.C to implead the respondents 3 and 4 as defendants 3 and 4. The petitioner filed 3 applications for amendment along with I.A.No.441 of 2006. The Petitioner withdrew three applications for amendment as not pressed and said applications were dismissed.

4.Subsequently, the petitioner filed present I.A.No.1646 of 2010 under Order 6 Rule 17 and Section 151 C.P.C for amendment to include the relief of declaration to declare the sale deed dated 06.03.2006 bearing document No.1980 of 2006 and sale deed dated 13.03.2006 bearing document No.2241 of 2006 as null and void and for a declaration to declare the order of the 2nd respondent dated 11.03.2006 as null and void and for mandatory injunction. According to the petitioner, the 2nd respondent, for the amounts due by the first respondent brought the property for sale

by public auction. The petitioner was successful bidder and highest bid amount is Rs.27,15,000/-. The petitioner has deposited 10% of the bid amount that is Rs.2,07,150/- . While so, the second respondent accepted the one time settlement offered by the first respondent and rejected the offer of the petitioner. The first respondent and the officials of the second respondent colluded together and illegally accepted one time settlement by the first respondent and illegally rejected offer of the petitioner. The first respondent inspite of the interim injunction, sold the property to third parties, in violation of injunction order. The fourth respondent, Managing Director of the second respondent acted illegally and the third respondent, R.Raj Kumar is the purchaser and therefore, the respondents 3 and 4 are the necessary parties to the suit.

5.The first respondent filed counter affidavit and denied all the averments made by the petitioner. According to the first respondent, he sold the portions of the suit properties in the year 2001, 2002 and 2003, even before filing of the suit. By two sale deeds dated 06.03.2006 and 13.03.2006, the first respondent sold the property before the suit summons were served on him. Both the reliefs now sought for by the petitioner were already sought for in

I.A.Nos.442 to 444 of 2006 and he withdrew the said application on 16.11.2007 as not pressed. Those applications were dismissed as withdrawn. The I.A.No.1646 of 2010 for very same relief is not maintainable. The first respondent has stated that he filed written statement on 05.06.2006, stating that he sold the properties by two sale deeds dated 06.03.2006 and 13.03.2006.

6.The second respondent filed separate counter affidavit and stated that by amendment, the petitioner is seeking to introduce a new cause of action and new case. In the suit, no relief is sought for against the second respondent, but by way of amendment, the petitioner is trying to change the entire character of the suit. The proposed parties are not necessary and proper parties to the suit. The petitioner has stated in I.A.No.1646 of 2010, that the application in I.A.No.441 of 2006 for impleading was allowed, while the same is pending for enquiry and prayed for dismissal of the applications.

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7.The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on record and arguments of the learned counsel for the parties, dismissed the

applications by the two separate orders, both dated 26.07.2011, holding that by the relief sought for in the application in I.A.No.1646 of 2010 for amendment, the petitioner is introducing a new case and new cause of action and in I.A.No.441 of 2006, filed for impleading, the proposed parties are not necessary and proper parties to decide the issue in the suit.

8. Against the said two orders dated 26.07.2011, made in I.A.Nos.1646 of 2010 and 441 of 2006 in O.S.No.72 of 2006, the present two Civil Revision Petitions are filed by the petitioner.

9. The petitioner filed suit for permanent injunction against the first respondent, restraining the first respondent from alienating or encumbering the suit property. No relief was sought against the second respondent. Now, the petitioner is seeking amendment to include the relief to include the three reliefs of declaration and one mandatory injunction by way of amendment. By these amendments, the petitioner is seeking to introduce a new case and new cause of action. The relief now sought for are no way connected with original relief sought for by the petitioner. Further, the petitioner had earlier filed three applications, seeking for

amendment of the plaint to include the very same relief now he is seeking in I.A.No.1646 of 2010. For the reasons best known to him, that he did not prosecute those applications and those applications were dismissed as not pressed. After four years, the petitioner has come out with the present application for the very same relief. The learned Judge, considered all the above facts and dismissed the application rightly holding that the petitioner is introducing new case by claiming relief against the second respondent. Further, the Managing Director of the second respondent, sought to be impleaded as 4th defendant on the ground that offer of the petitioner was illegally rejected and offer of the first respondent for one time settlement was illegally accepted. This claim cannot be decided in the suit for permanent injunction sought against the first respondent. The learned Judge has rightly held that petitioner has to agitate the claim before the proper forum and proposed parties are not necessary parties to decide the issue. In view of the relief of permanent injunction sought for in the suit and dismissal of the earlier applications filed by the petitioner for the very same relief and dismissal of the earlier applications, subsequent purchasers are not necessary party to decide the issue in the suit. The learned Judge has considered all the above facts and dismissed both the

applications rightly.

10. In view of the above facts, there is no illegality or irregularity warranting interference by this Court, with the order of the learned Judge dated 26.07.2011. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2017

Index: Yes/No

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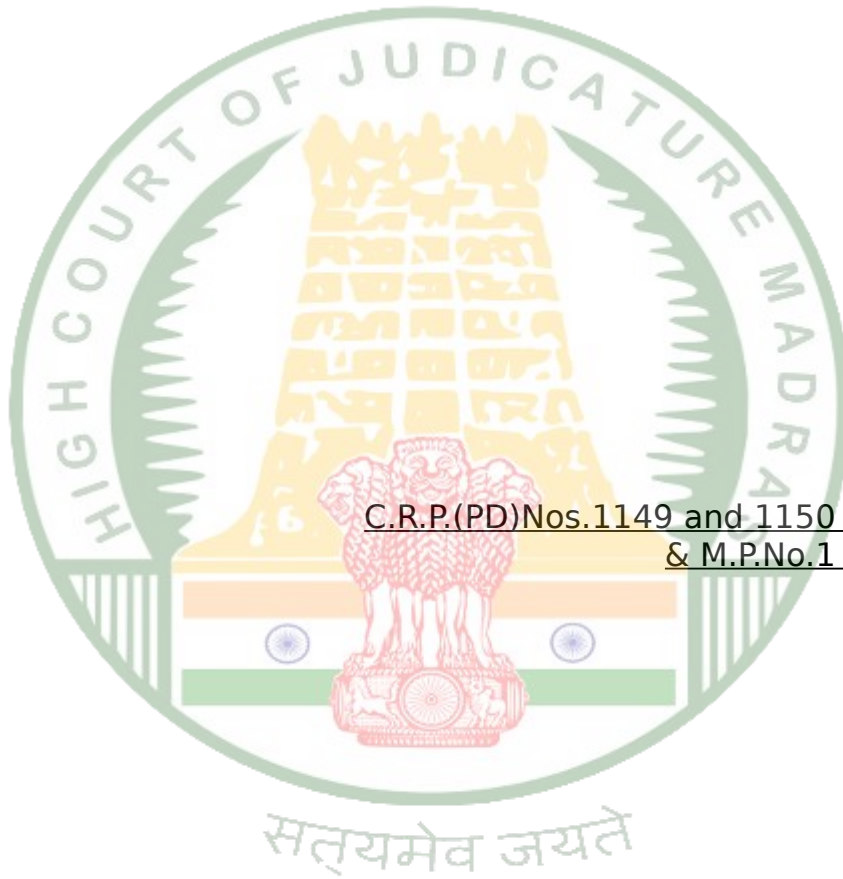
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V.M.VELUMANI,J.

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