

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1523 of 2012
and M.P.No.1 of 2012

A.Palanisamy .. Petitioner

Vs.

1. Karthika
2. Valliammal

Rangasamy Gounder (died)

3. Saraswathi
4. Thangamani
5. Lalithamani
6. Prakash
7. Sudarsan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 13.02.2012 made in I.A.No.1439 of 2011 in O.S.No.119 of 1997 on the file of the District Munsif Court, Palladam.

For Petitioner : Mr.J.Pothiraj

For R1 : Mr. K.Govi Ganesan

For R2 : No appearance

For R3 to R7 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and final order dated 13.02.2012 made in I.A.No.1439 of 2011 in O.S.No.119 of 1997 on the file of the District Munsif Court, Palladam.

2. The petitioner is the third party, respondents 1 & 2 are the plaintiffs and the respondents 3 to 7 are the defendants 2 to 6 in O.S.No.119 of 1997 on the file of the District Munsif Court, Palladam. The respondents 1 and 2 filed suit for partition. The petitioner filed two applications, one in I.A.No.1439 of 2011 to implead him as 9th defendant and another application in I.A.No.1440 of 2011 to set aside the preliminary decree passed on 07.11.2012.

3. According to the petitioner, he purchased the share of the 7th respondent/6th defendant by the sale deed dated 22.01.1999. The 7th respondent purchased the same from one Rangasamy Gounder and others by two sale deeds dated 11.02.1991 and 18.04.1991. The 7th respondent/6th defendant was a minor, at that time, his mother, after obtaining permission in O.P.No.126 of 1998

on the file of the District Court, Coimbatore, dated 09.12.1998, sold the minor's property to the petitioner. The first respondent is not entitled to claim partition as her father as kartha of the family sold the property to the petitioner's vendor. The petitioner came to know about the pendency of the suit only when the neighbouring land owners informed about the inspection by the Advocate Commissioner. The petitioner is a bonafide purchaser and therefore, he is necessary and proper party to the suit to safeguard his interest.

4. The first respondent filed counter affidavit opposing the said application and submitted that the petitioner was aware of the suit and pending suit, he purchased the property and after five years of purchase only, the petitioner filed the application for impleading himself as defendant, which is not maintainable.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application on the ground that the petitioner has not produced any sale deed by which, he has alleged to have purchased the property as well as order passed by the District Court in O.P.No.126 of 1998, permitting the 7th respondent/6th defendant to sell the property.

6. Against the order of dismissal dated 13.02.2012 made in I.A.No.1439 of 2011, the present civil revision petition is filed by the petitioner/third party.

7. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

8. From the records, it is seen that the respondents 1 & 2/plaintiffs admitted that the petitioner purchased the property pending suit and contended that the petitioner filed application after five years of purchasing the property. Further, an ex parte decree has been passed, which shows that the petitioner's vendor, who is the 6th defendant/7th respondent herein has not contested the matter and not safeguarding the interest of the petitioner, who is a purchaser pending suit.

9. It is well settled that the purchaser pending suit is necessary party, as his vendor has no interest in the property after sale and the vendor may not contest the suit. In order to avoid

multiplicity of proceedings and in the interest of justice, it has been held that the purchaser pending suit may be impleaded as a necessary and proper party to the suit.

10. In the present case, the petitioner is necessary and proper party in order to give opportunity to put forth his case on merits and to avoid multiplicity of proceedings. The learned Judge has not properly exercised his power conferred on him and has not given valid reason for dismissing the application.

11. In the result, the Civil Revision Petition is allowed by setting aside the order of the learned Judge dated 13.02.2012 made in I.A.No.1439 of 2011. The learned Judge is directed to hear I.A.No.1440 of 2011 after issuing notice to both the parties and pass orders on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking/Non-Speaking Order

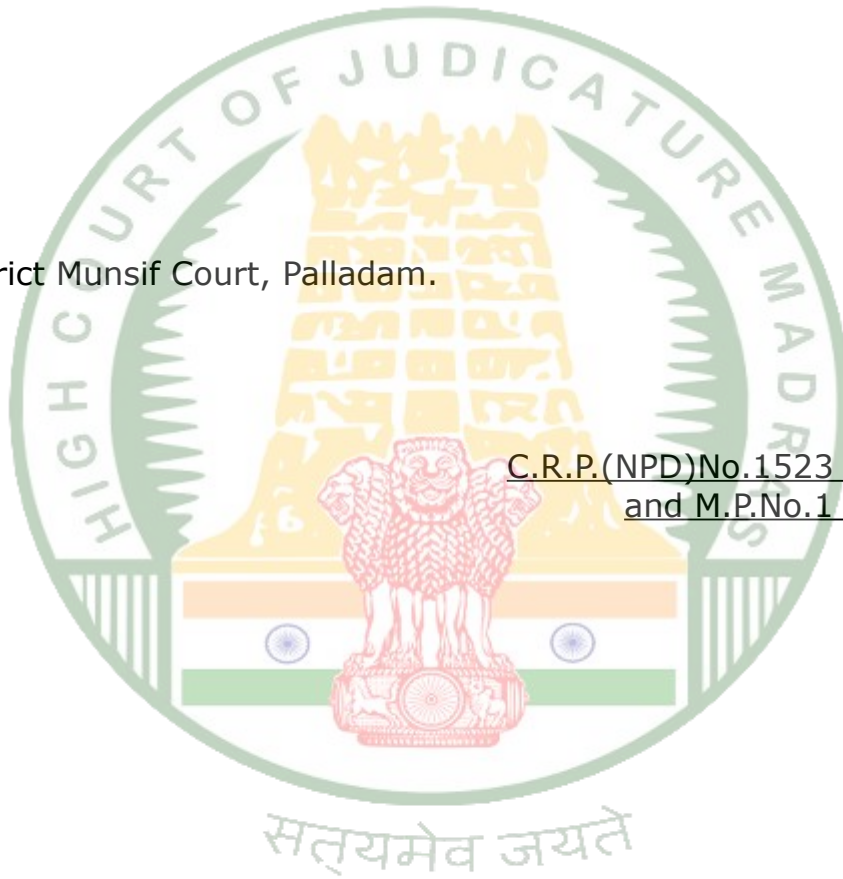
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V.M.VELUMANI,J.

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To

The District Munsif Court, Palladam.



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