

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3083 of 2009
& M.P.No.1 of 2009

1. C.Elumalai
2. E.Senthil kumar
3. E.Sridhar

.. Petitioners

Vs.

1. P.Damodaran
 2. S.V.Kumar
 3. A.G.L.Irudayaraj
- Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order and decretal order dated 20.01.2009 made in I.A.No.12746 of 2008 in O.S.5795 of 2004 on the file of the V Assistant Judge City Civil Court, Chennai.

For petitioners : Mr.R.Thiagarajan

For R1 and R2 : Not ready in notice

For R3 : M/s.Rajnish pathiyil
(vakalat not filed)

ORDER

This Civil Revision Petition is filed to set aside the order and

decretal order dated 20.01.2009 made in I.A.No.12746 of 2008 in O.S.5795 of 2004 on the file of the V Assistant Judge City Civil Court, Chennai.

2. Heard the learned counsel appearing for the petitioners as well as the third respondent and perused the materials available on record.

3. The petitioners are third parties, first respondent is the plaintiff and respondents 2 and 3 are the defendants in O.S.No.5795 of 2004. The first respondent herein filed the above suit against the second respondent for permanent injunction, restraining the second respondent from interfering with his peaceful possession and enjoyment of the suit property. Subsequently, as per the order dated 04.11.2006, passed in C.R.P.(PD)No.1412 of 2005, filed against the I.A.No.21078 of 2004, the third respondent herein was impleaded as the second defendant in the suit.

4. When the suit was listed for trial, the petitioners filed I.A.No.12746 of 2008 under Order 1 Rule 10(2) of C.P.C to implead

themselves as defendants 3 to 5 in the suit. According to the petitioners, they filed C.S.No.597 of 2006 (Now transferred to VI Additional City Civil Court and renumbered as O.S.No.12065/2010) for declaration of their title in respect of the very same suit schedule property. The respondents have no title to the suit property and are claiming title based on the fraudulent sale deed dated 05.11.1975, executed by one K.Ganesh Singh. The first respondent has filed the suit for declaration of title, mandatory injunction and for recovery of possession against the respondents 2 and 3, restraining them from interfering with his possession. The petitioners, who are owners of the suit property and therefore, they are necessary and proper party to the suit.

5. The first respondent/plaintiff did not file any counter.

6. The third respondent has filed counter affidavit and opposed the said application and submitted that the petitioners have filed the suit in C.S.No.597 of 2006 (Now transferred to VI Additional City Civil Court and renumbered as O.S.No.12065/2010) for declaration to set aside the sale deed dated 05.11.1975 executed in favour of the third respondent. In the said suit, the

petitioners have filed O.A.Nos.637 and 638 of 2006 for injunction and the same was dismissed. Against the said order of dismissal, the petitioners have filed O.S.A.Nos.336 and 337 of 2006 before the First Division bench of this Court and those appeals were dismissed in limine. Against the said judgments, petitioners filed S.L.P before the Hon'ble Apex Court and the same was disposed of in limine. The petitioners, having failed in all the above proceedings have come forward with the present application for impleading themselves as parties to the suit. The third respondent is the owner of the property as per the sale deed and the petitioners have no right or title over the suit property and therefore, they are not necessary and proper parties to the suit.

7. The learned Judge, considering the fact that the first respondent filed suit for permanent injunction and the fact that suit in C.S.No.597 of 2006 (Now transferred to VI Additional City Civil Court and renumbered as O.S.No.12065/2010), dismissal of O.S.A.Nos.336 and 337 of 2006 filed against dismissal of applications for injunction filed by petitioners and SLP filed by the petitioners with regard to the same suit property was dismissed and no allegations are made against the petitioners, dismissed the

present application for impleading the petitioners in the suit.

8. Against the order of dismissal dated 20.01.2009, made in I.A.No.12746 of 2008 in O.S.No.5795 of 2004, the present Civil Revision Petition is filed by the petitioners.

9. When the Civil Revision Petition is taken up for hearing, the learned counsel appearing for the third respondent submitted that O.S.No.5795 of 2004 filed by the first respondent was dismissed on 02.09.2009, wherein the judgment reads as follows:

*"Plaintiff absent. This counsel reports 'no instruction'.
Dismissed. No costs."*

It was also reported by the counsel for the third respondent that the suit itself was dismissed and nothing survives in this Civil Revision Petition. In addition to the above contentions, the learned counsel appearing for the third respondent made submissions on merits. Hence the Civil Revision Petition is disposed on merits.

10. From the materials available on record and the contentions of the learned counsel for the third respondent, it is

seen that the learned Judge, considering the fact that the suit is only for injunction and no allegations are made against the petitioners in the plaint held that the petitioners are not necessary and proper parties to the suit and dismissed the application. In the circumstances, I find there is no irregularity or illegality warranting interference with the order of the learned Judge dated 20.01.2009.

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

01.11.2017

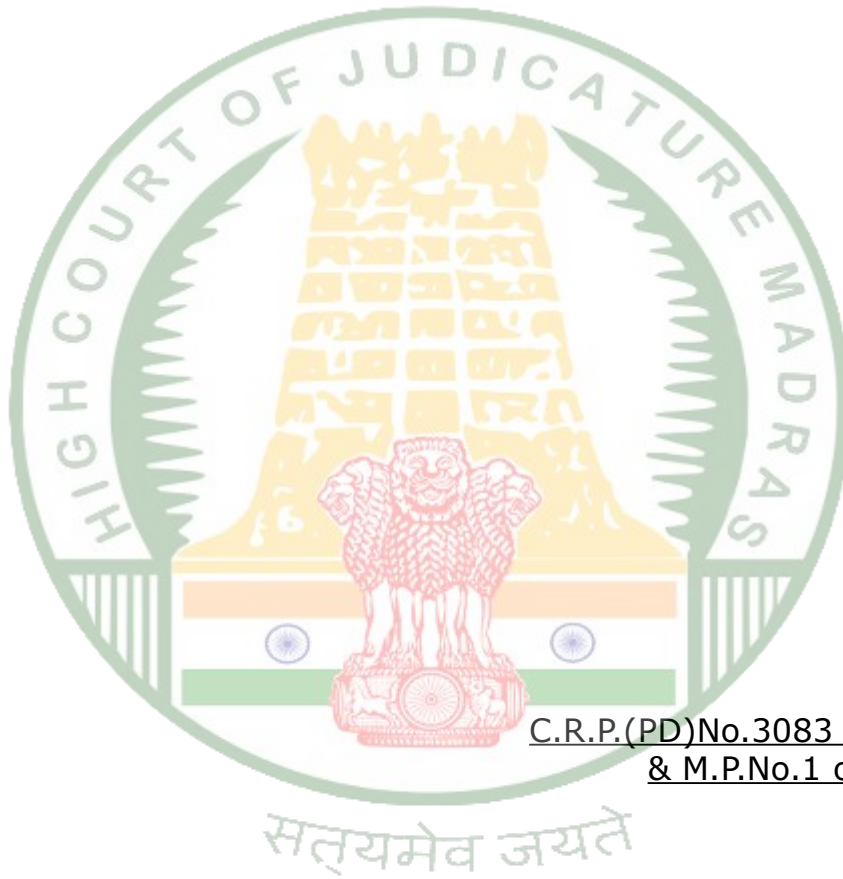
Index: Yes/No
gsa

To

The V Assistant Judge,
City Civil Court,
Chennai.

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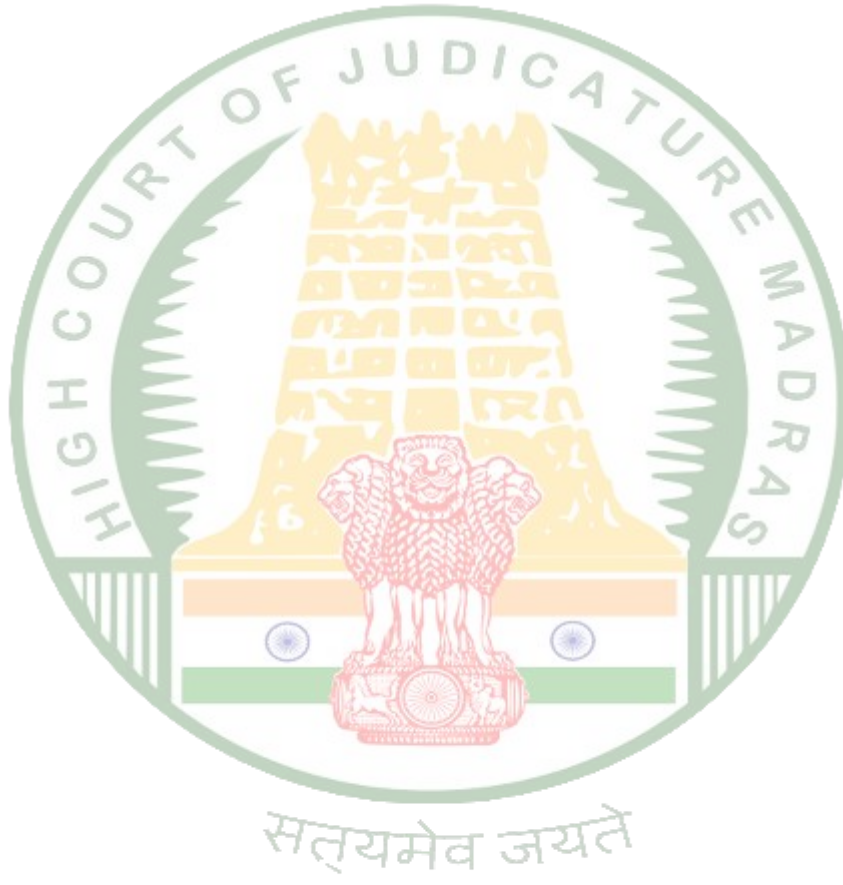
V.M.VELUMANI, J.
gsa



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