

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.256 & 257 of 2012
and M.P.No.1 of 2012

Manickam

.. Petitioner in
both the C.R.Ps'

Vs.

- 1.Gandhimathi
- 2.Ponnan (Deceased)
- 3.Vijaya (Deceased)
- 4.Selvaraj
- 5.The Coimbatore Corporation
Rep. by its Commissioner
Coimbatore.

.. Respondents in
both the C.R.Ps'

RR4 already recorded as Lrs of
deceased 2 & 3rd respondent vide
order of Court dated 30/08/2017,
by VMVJ, made in memo filed
dated 28.08.2017, in C.R.P.Nos.256 & 257/2012.

COMMON PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 21.09.2010 and 20.09.2011 made in I.A.Nos.97 of 2009 & 197 of 2011 respectively in O.S.No.2028 of 2006 on the file of the III Additional District Munsif, Coimbatore.

For Petitioner : Mr.V.Manohar
in both CRPs

For Respondents : No appearance
in both CRPs

COMMON ORDER

This Civil Revision Petition has been filed against the fair and decretal orders dated 21.09.2010 and 20.09.2011 made in I.A.Nos.97 of 2009 & 197 of 2011 respectively in O.S.No.2028 of 2006 on the file of the III Additional District Munsif, Coimbatore.

2. The issues and parties involved in both the civil revision petitions are one and the same. Therefore, disposed of by this common order.

3. The petitioner is the plaintiff and respondents 2 to 5 are the defendants in O.S.No.2028 of 2006 on the file of the III Additional District Munsif, Coimbatore. The petitioner has filed the said suit for mandatory injunction against the respondents 2 to 4 to remove the wall put up as described in item No.2 of the suit property, failing which, allow the petitioner to remove the same and for permanent injunction against the respondents 2 to 4, restraining them from

having peaceful possession and enjoyment of the suit property in item Nos.1 & 2 and permanent injunction restraining the 5th respondent from taking any action against the petitioner with regard to the enjoyment of the 2nd item of the property except under due process of law.

4. The petitioner filed I.A.No.97 of 2009 for impleading the first respondent herein, who is the wife of the petitioner as second plaintiff in the suit. According to the petitioner, pending suit he settled the suit property in favour of the first respondent and she is in possession and enjoyment of the property from the date of settlement. Therefore, she is necessary and proper party to the suit proceedings. The 5th respondent filed counter affidavit and submitted that item no.2 of the suit property absolutely belongs to the Corporation and the petitioner is not entitled to any relief as claimed.

5. The learned Judge, dismissed the application on the ground that the petitioner has not produced the alleged settlement deed settling the suit property in favour of his wife/first respondent herein. The petitioner filed I.A.No.197 of 2011 to review the said

order on the ground that the petitioner had filed the settlement deed along with the petition and the order of the learned Judge dismissing the application is erroneous. The respondents 3 & 4 filed counter affidavit and submitted that the petitioner did not let in any evidence and did not mark any document. The Court cannot consider the unmarked document. The 5th respondent filed a memo stating that the petitioner has not informed about the settlement deed to the 5th respondent and did not produce the copy of the same and failed to comply the provisions of Coimbatore City Municipal Corporation Act.

6. The learned Judge, dismissed the application on the ground that the petitioner did not place any reliance on the settlement deed at the time of argument and also did not bring it to the notice of filing of the settlement deed.

7. Against the said order of dismissal dated 21.09.2010 and 20.09.2011 made in I.A.Nos.97 of 2009 & 197 of 2011 respectively in O.S.No.2028 of 2006, the present Civil Revision Petitions are filed.

8. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. As far as CRP (PD) No.256 of 2012, filed by the petitioner is concerned, the petitioner filed petition in I.A.No.97 of 2009 to implead his wife, the first respondent herein as second plaintiff in the suit on the ground of that he has settled the property in favour of the first respondent and she is in possession and enjoyment of the same. The said application was dismissed on the ground that the petitioner failed to file the said settlement deed. In I.A.No.197 of 2011 filed by the petitioner to review the said order of dismissal, the learned Judge held that petitioner did not bring it to the notice of the Court, the filing of the settlement deed along with the petition and did not place any reliance on the settlement deed during the arguments. Both the reasons are not valid reasons. The learned Judge has not given any finding that the petitioner did not produce the settlement deed along with the petition.

6. The contention of the learned counsel for the petitioner that the petitioner has settled the property in favour of his wife, the first

respondent herein and she is in possession and enjoyment of the same is not disputed by the respondents 2 to 5. The respondents have opposed the application on technical grounds. The learned counsel for the petitioner produced a copy of the settlement deed dated 07.08.2008 bearing Document No.2445 of 2008.

7. In view of the fact that the petitioner has settled the property in favour of the first respondent, the first respondent is necessary and proper party to the suit as second plaintiff and the order of the learned Judge dated 21.09.2010 passed in I.A.No.97 of 2009 in O.S.No.2028 of 2006 is set aside.

8. In the result, CRP (PD) No.256 of 2012 is allowed. In view of order passed in CRP (PD) No.256 of 2012, no order is necessary to be passed in CRP (PD) No.257 of 2012. Therefore, the C.R.P.(PD) No.257 of 2012 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

klt

05.09.2017

V.M.VELUMANI,J.

klt

To

The III Additional District Munsif,
Coimbatore.



C.R.P.(PD)Nos.256 & 257 of 2012

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