

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2017

Coram

THE HON'BLE MRS.JUSTICE V.M.VELUMANI

**C.R.P.No.2602 of 2012
and
M.P.No.1 of 2012**

T.Subramanian

...Petitioner

Vs.

1. Revathy
2. S.SenthilKumar

...Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the decreetal order made in I.A.No.80/2011 in O.S.No.138 of 2009 dated 05.01.2012 on the file of the Additional Sub Judge, Puducherry.

For Petitioner : Mr.T.P.Manoharan

For Respondents : M/s.Usha Ramman for R1
Mr.T.S.Baskaran for R2

ORDER

This Civil Revision Petition has been filed to set aside the order dated 05.01.2012 made in I.A.No.80/2011 in O.S.No.138 of 2009 on the file of the Additional Sub Judge, Puducherry.

2. The petitioner is the plaintiff, the first respondent is the proposed party and the second respondent is the defendant in the suit in O.S.No.138 of 2009 before Additional Sub Court, Puducherry. The petitioner filed the above suit against the second respondent for declaration and for recovery of possession. The first respondent filed I.A.No.80/2011 for impleading herself as second defendant on that ground that she has purchased 170 sq.ft from the petitioner and the petitioner entered into an oral agreement to sell the remaining extent of the suit property to the first respondent.

3. The petitioner filed counter and submitted that the first respondent has nothing to do with the 'C' schedule property. The second respondent/defendant in the suit encroached the said property and he is in illegal possession of the suit property. There is no oral agreement to sell the property to the first respondent. The first respondent also encroached 170 sq.ft. of the petitioner's property on the southern side and putting up illegal construction. In view of the same, according to the petitioner, the first respondent is not a necessary and proper party to the suit.

4. The second respondent filed counter and submitted that the

first respondent has nothing to do with the suit property. The first respondent is a neighbouring house owner and she is trying to interfere with the possession of the second respondent and hence he filed suit in O.S.No.754 of 2010 for permanent injunction against the first respondent. Initially, interim injunctions were granted in I.A.Nos.1489 and 1490 of 2010 in O.S.No.754 of 2010 and subsequently, the said interim orders were made absolute.

5. The learned Judge, in view of the claim of the first respondent with regard to suit 'C' schedule property, allowed the application filed by the first respondent, in order to avoid multiplicity of proceedings.

6. Against the order dated 05.01.2012 made in I.A.No.80/2011 in O.S.No.138 of 200, the petitioner has come out with the present Civil Revision Petition.

7. Heard the learned counsels for the petitioner as well as respondents and perused the materials available on record.

8. The petitioner has filed suit for declaration that he is the absolute owner of the 'C' schedule property and recovery of possession

from the second respondent. According to the petitioner, second respondent has encroached 'C' schedule property and he is in illegal possession. The first respondent has filed I.A.No.80 of 2011 to implead herself as second defendant on the ground that she has purchased 170 sq.ft. in 'C' schedule property from the petitioner. The petitioner has orally agreed to sell the remaining extent of the property. This contention is denied by the petitioner and has stated that 170 sq.ft. does not form part of the 'C' schedule property. Considering the fact that petitioner is claiming relief of declaration with regard to 'C' schedule property and recovery of possession from the second respondent. If any decree is passed in the suit with regard to declaration and possession will bind on the second respondent. In view of the denial of petitioner that 170 sq.ft. is not a part of the 'C' schedule property and nature of relief sought for in the suit, the first respondent is not a necessary and proper party in the suit. The learned Judge has committed irregularity in not properly appreciating the relief sought for in the suit and averments in the counter affidavit filed by the petitioner and the second respondent. The learned Judge has not considered the said objections and the reason given by the learned Judge for impleading the first respondent in the suit is not a valid reason. Accordingly, the order dated 05.01.2012 made in

I.A.No.80/2011 in O.S.No.138 of 2009 is liable to be set aside and it is accordingly set aside.

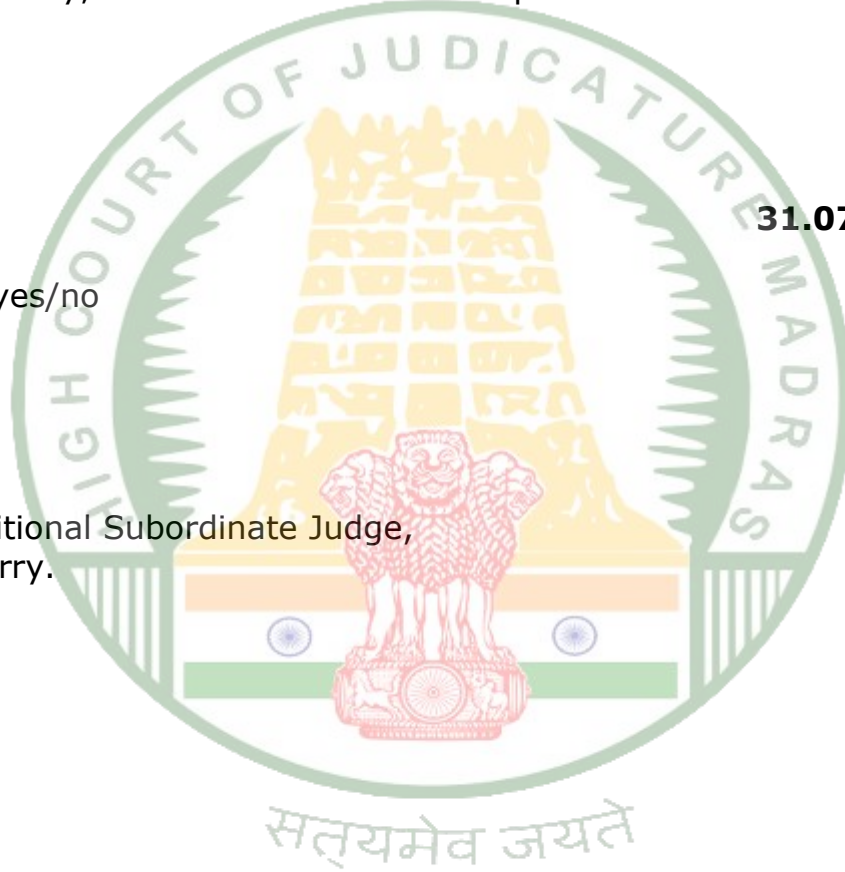
9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

31.07.2017

Index : yes/no
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To

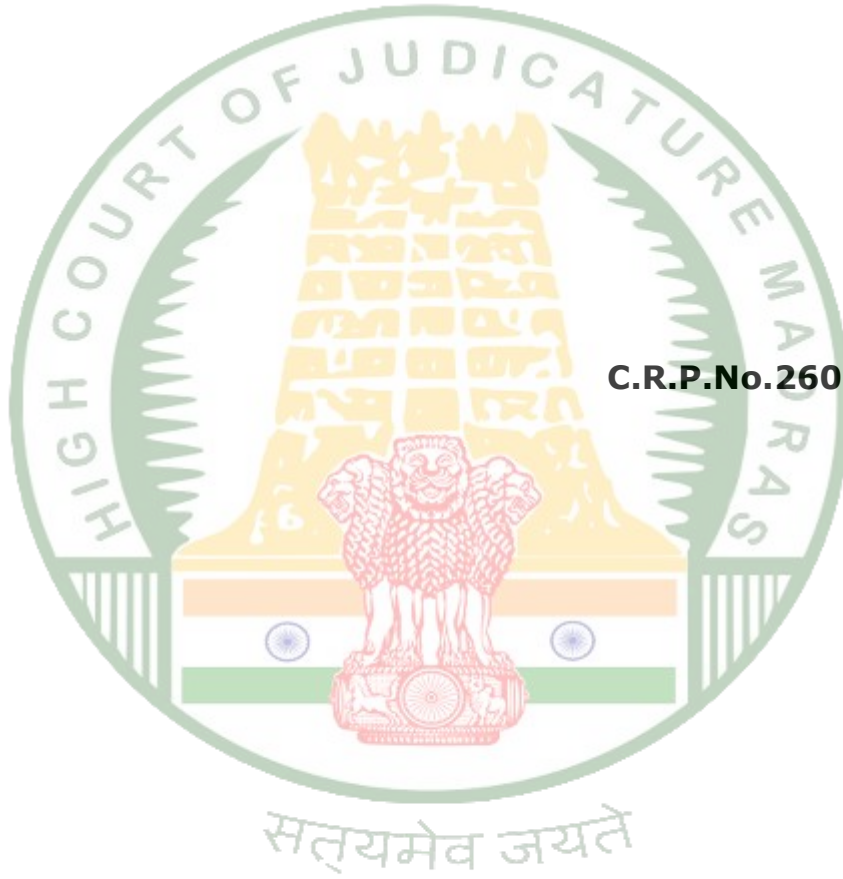
The Additional Subordinate Judge,
Puducherry.



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V.M.VELUMANI, J.

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C.R.P.No.2602 of 2012

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