

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2677 of 2012

M.P.No.1 of 2012

R.Thanigachalam .. Petitioner

Vs.

1. Gopalakrishnan

2. V.Palani

3. The Thasildar
Taluk Office
Panruti.

4. The District Revenue Officer
O/o The District Revenue Officer
Cuddalore.

5. The District Collector
O/o The District Collector
Cuddalore.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.03.2012 made in I.A.No.375 of 2010 in O.S.No.171 of 2009 on the file of the District Munsif, Panruti.

For Petitioner : Mr.S.K.Rakhunathan

For Respondents : Mr.I.Abrar Md Abdullah

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 05.03.2012 made in I.A.No.375 of 2010 in O.S.No.171 of 2009 on the file of the District Munsif, Panruti.

2. Petitioner is the plaintiff, 1st respondent is a 3rd party to the suit and respondents 2 to 5 are the defendants 1 to 4 in O.S.No.171 of 2009 on the file of the District Munsif, Panruti. The petitioner filed the above suit for declaration, permanent injunction restraining the 2nd respondent from interfering with the peaceful possession and enjoyment of the suit property and for a mandatory injunction directing the respondents 3 to 5 to cancel the order of the 4th respondent dated 11.03.2006. The 2nd respondent filed written statement under Order VIII Rule 1, C.P.C., on 12.11.2009 and is contesting the suit. The first respondent who is the third party to the suit, filed I.A.No.375 of 2010 in O.S.No.171 of 2009, claiming that he is brother of the 2nd respondent and he is the owner of 20 cents of the suit property for which he is in possession. Therefore, he claims to be a necessary and proper party to the suit.

3. The petitioner filed counter and opposed the said application and submitted that the 2nd respondent instigated the 1st respondent to file the above application to create confusion and to drag on the proceedings. The first respondent has not filed any document with regard to his title. Chitta will not be an evidence of his possession. The petitioner has filed the said suit for declaration and injunction and it is for the petitioner to prove the title and his possession. Any decree passed against the 2nd respondent will not be binding on the 1st respondent.

4. The learned Judge considering the averments in the affidavit and counter affidavit, allowed the application on the admission of 2nd respondent that 1st respondent is the owner of the 20 cents of land of the suit property and the question of possession can be decided during trial.

5. From the materials on record, it is seen that the respondents 1 and 2 are brothers. The 1st respondent is claiming ownership for 20 cents of land in the suit property. To substantiate his case, he has produced Chitta, which will not prove his right over the title. The 1st respondent has not produced any other

documents and not even mentioned about the documents based on which he is claiming title.

6. The learned Judge erred in allowing the application on the admission of the 2nd respondent, who is the brother of the 1st respondent. The learned Judge failed to consider the contention of the petitioner that only at the instigation of the 2nd respondent, 1st respondent filed application to create confusion and drag on the proceedings. It is for the petitioner to prove his title of possession in respect of the 20 cents, claimed by the 1st respondent. The learned Judge has committed irregularity in allowing the application.

7. In view of the above facts, the civil revision petition is allowed and the order dated 05.03.2012 made in I.A.No.375 of 2010 in O.S.No.171 of 2009 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2017

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Index: Yes/No
Internet: Yes/No

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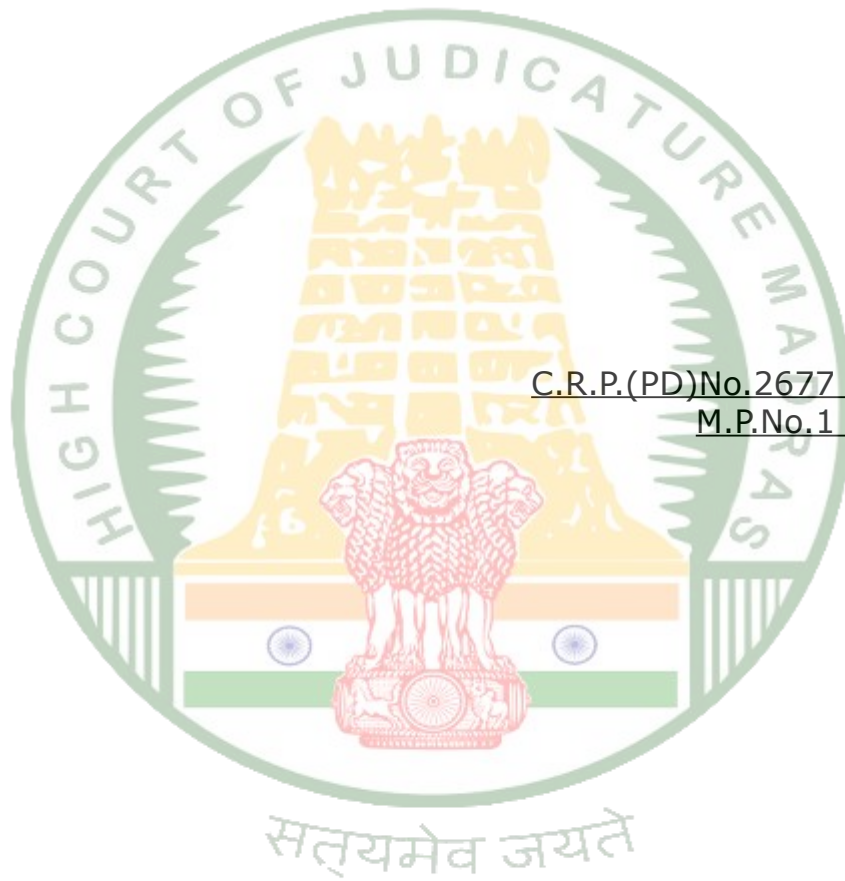
The District Munsif, Panruti



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V.M.VELUMANI, J.

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