

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.323 of 2013
& M.P.No.1 of 2013

Umapathy

... Petitioner

Vs.

Murugavel

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and the decretal order dated 28.03.2012 made in I.A.No. 23 of 2012 in O.S.No. 151 of 2010 on the file of the II Additional Subordinate Court, Cuddalore.

For Petitioner : Mr. T.Sezhian

For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the fair and the decretal order dated 28.03.2012 made in I.A.No. 23 of 2012 in

O.S.No. 151 of 2010 on the file of the II Additional Subordinate Court, Cuddalore.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.151 of 2010 on the file of the II Additional Subordinate Court, Cuddalore. The respondent, who is the brother of the petitioner, filed suit for partition and separate possession of the suit property. The petitioner filed written statement and is contesting the suit. The trial commenced. The respondent examined his witnesses and closed his side of evidence. When the suit was posted for evidence on behalf of the petitioner, the petitioner filed I.A.No.23 of 2012 under Order I Rule 10 r/w Section 151 of C.P.C, to implead one Indira, who is the second wife of the respondent/plaintiff, as a party to the suit.

3. According to the petitioner, at request of his father, out of his own funds, he purchased the suit property in his name and in the name of respondent, who was minor at that time represented by their father. Subsequently, at request of their father and respondent, the petitioner purchased the property in the name of Indira, second wife of respondent, which is worth more than 50% of

the value of the suit property on the understanding that the respondent would relinquish his right in the suit property. After purchase of the property in the name of Indira, the respondent orally relinquished his right in the suit property to the knowledge of all. The respondent is residing in the property purchased in the name of his wife Indira. The petitioner put up superstructure by spending several lakhs of rupees in the suit property to the knowledge of all. At the instigation of some rowdy elements, the respondent filed the present vexatious suit. In the circumstances, Indira, wife of the respondent is necessary and proper property to the suit to decide the issue.

4. The respondent filed counter affidavit and denied all the averments made by the petitioner in the said application. According to the respondent, no cause of action has arisen against Indira and in support of his contention, he relied on the judgment of this Court reported in 1998 (II) CTC page No.470 (Dr.S.Kameswaran v. A.Jayaraman and another).

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and

judgment relied on by the respondent/plaintiff, dismissed the application.

6. Against the said order of dismissal dated 28.03.2012 made in I.A.No.23 of 2012, the present Civil Revision Petition is filed by the petitioner.

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

8. The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the present application and grounds of Civil Revision Petition.

9. From the materials available on record, it is seen that the petitioner in the written statement itself has taken a stand, which he has now taken in the present application. The petitioner has not taken any steps to implead the said Indira at that time itself. The petitioner has come out with the present application after commencement of trial and after the respondent closed his side of evidence.

10. It is pertinent to note that the proposed party is not made as a respondent in the present application. Secondly, no allegation is made against the said Indira and has rightly contended by the respondent that no cause of action has arisen against the said Indira. The petitioner has not made out any case as to how the said Indira is necessary and proper party to the suit and as to how her presence is necessary to decide the issue in the suit.

11. The learned Judge has considered all these aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with the order of the learned Trial Judge, dated 28.03.2012.

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

WEB COPY 09.10.2017

Index : Yes/No
dm/kj

V.M.VELUMANI, J.

dm/kj

To

The II Additional Sub Judge,
Cuddalore.



C.R.P.(PD)No.323 of 2013
& M.P.No.1 of 2013

09.10.2017
WEB COPY