



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.178 of 2017 (PD)
and
CMP(MD)No.759 of 2017(PD)

C.Jeyaveeran

... Petitioner/Petitioner/Plaintiff

Vs.

1.M.Kareemkani
2.C.Renganathan
3.T.Govindha Raj
4.P.Rajangam
5.A.Malathi

... Respondents 1 to 5/
Respondents 1 to 5/Defendants

6. The Tahsildar
Uthamapalayam Taluk,
Theni District.

7. The Inspector of Police,
Uthamapalayam Police Station,
Uthamapalayam Taluk,
Theni District.

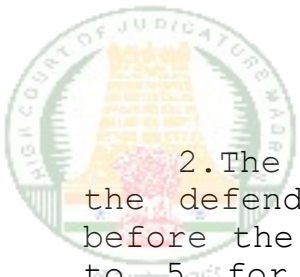
... Respondents 6 & 7/Respondents 6 & 7/
Proposed defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records pertaining to the impugned fair and decreetal order made in I.A.No.406 of 2016 in O.S.No.130 of 2012 on the file of the Learned District Munsif Court, Uthamapalayam, Theni District, and set aside the same by allowing the instant Civil Revision Petition.

For Petitioner : M/S.R.Shankar Ganesh
For Respondents 1 to 5/
Caveator : Mr.P.Muthuraja

ORDER

The petitioner has filed this Civil Revision Petition to call for the records pertaining to the impugned fair and decreetal order made in I.A.No.406 of 2016 in O.S.No.130 of 2012 passed by the Learned District Munsif Court, Uthamapalayam, Theni District, and set aside the same.



2.The petitioner is the plaintiff. The respondents 1 to 5 are the defendants. The petitioner filed suit in O.S.No.130 of 2012 before the District Munsif, Uthamapalayam against the respondents 1 to 5 for injunction restraining the respondents 1 to 5 from interfering with his peaceful possession and enjoyment of the suit property. According to the petitioner, he is the owner of the suit property and he is in possession and enjoyment of the same. The Respondents 1 to 5 wanted to purchase the said property from the petitioner. The petitioner refused to sell the property, therefore the respondents 1 to 5 are trying to interfere with his possession claiming pathway in the suit property, hence, he filed suit. After filing of suit, the petitioner filed I.A.No.406 of 2016 to implead the respondents 6 & 7 as necessary and proper parties to the suit in O.S.No.130 of 2012 on the ground that the respondents 1 to 5 with the help of respondents 6 & 7 based on the wrong document trying to interfere with his possession. The petitioner gave a complaint to the 7th respondent. The 7th respondent did not take any action against the respondents 1 to 5 on the basis of wrong document issued by the 6th respondent. The petitioner filed Crl.O.P(MD)No.2329 of 2014, Crl.O.P.(MD)No.18592 of 2014 and Crl.O.P(MD)No.20260 of 2014 to take action against the respondents 1 to 5. Subsequently, the 7th respondent registered a complaint given against the respondents 1 to 5 on 16.08.2014. In the circumstances, the respondents 6 & 7 are the necessary and proper parties to the suit.

3.The respondents 1 to 5 filed counter affidavit and submitted that the property in Survey No.437/1C measuring 0.48.0 Ares and in S.No.437/2E measuring 0.26.05 Ares belong to the brother of first respondent. The property in S.No.428/2 measuring 0.61.5 Ares belong to the another brother of the first respondent. The first respondent and his family members are enjoying the property as joint family property by cultivating the same by the supervision of respondents 2 to 5. In order to grab money from the first respondent and his family members, the petitioner filed suit and the present application is filed only to drag on the proceedings.

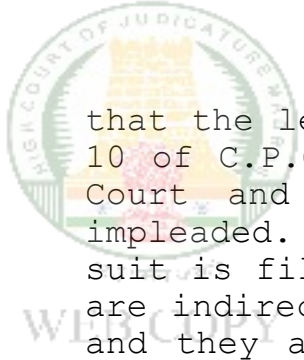
4.The respondents 6 & 7 were set ex-parte before the lower Court.

5.The learned Judge considering the averments made in the affidavit and counter affidavit and upon perusing the materials on record and arguments of the parties, dismissed the application holding that no cause of action has arisen against the respondents 6 & 7 and suit is for injunction in which title of the property cannot be decided and respondents 6 & 7 are not necessary and proper parties to the suit.

6.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

<https://hcservices.ecourts.gov.in/hcservices/>

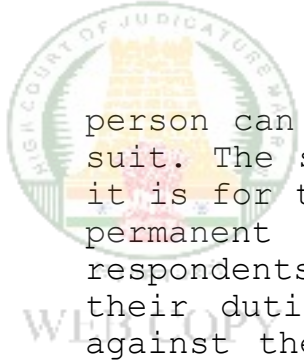
7.The learned counsel appearing for the petitioner submitted



that the learned Judge failed to properly consider the Order 1 Rule 10 of C.P.C., and failed to consider the various judgments of this Court and Hon'ble Apex Court that at any stage party can be impleaded. The learned Judge failed to consider even though the suit is filed against the respondents 1 to 5, the respondents 6 & 7 are indirectly involved with regard to possession of the petitioner and they are not taking any action in the complaint given by the petitioner. The 7th respondent is harassing the petitioner and his family members and arrested them based on the false complaint given by the respondents 1 to 5. The petitioner is in possession and enjoyment of the property and the same can be proved by the petitioner by examining the 6th respondent by Revenue Records. Therefore, the 6th and 7th respondents are necessary and proper parties to the suit.

8. The learned counsel appearing for the Caveator/respondents 1 to 5 submitted that the petitioner has filed suit for injunction against the respondents 1 to 5 on the ground that he is in possession and enjoyment of the suit property. The respondents 1 to 5 are not interfering with his peaceful possession. On the other hand, the first respondent and his family members are owners and they are in possession and enjoyment of the property mentioned in the plaint. Only with a view to grab money from the first respondent and his family members, the petitioner has filed the present suit. In the nature of relief sought for in the suit, the respondents 6 & 7 are not necessary and proper parties. The petitioner has to prove his possession and enjoyment and the respondents 1 to 5 are interfering with his possession and prayed for dismissal of the Civil Revision Petition.

9. From the records, it is seen that the petitioner filed suit for injunction against the respondents 1 to 5 alleging that he is the owner of the property and he is in possession and enjoyment of the same and the respondents 1 to 5 are interfering with his peaceful possession and enjoyment of the property. The respondents 1 to 5 have filed written statement and contesting the suit. According to the petitioner, subsequent to filing of the suit also the respondents 1 to 5 are interfering with the petitioner's possession. The petitioner gave complaint to the 7th respondent and the said complaint was registered after orders passed by this Court. The 7th respondent is not taking any action against the respondents 1 to 5, in view of the wrong document issued by the 6th respondent. Therefore, the petitioner filed petition for impleading the respondents 6 & 7. Considering the materials on record, the learned Judge dismissed the application holding that the respondents 6 & 7 are not necessary and proper parties to the suit for deciding the issue in the suit. The allegations of the petitioner is that respondents 6 & 7 in collusion with respondents 1 to 5 are harassing the petitioner and his family members. The contention of the learned counsel for the petitioner that the petitioner has to prove his possession by Revenue Records by examining the 6th respondent and therefore, the 6th respondent is necessary party, is untenable. A



person can be examined as witness even without being a party to the suit. The suit is for injunction against the respondents 1 to 5 and it is for the petitioner to prove his possession to get a decree for permanent injunction. The learned Judge has rightly held that if respondents 6 & 7, who are Government Officials failed to performing their duties, it is open to the petitioner to take legal action against them. The learned Judge has rightly held that there is no cause of action for impleading the respondent 6 & 7 and they are not necessary and proper parties to the suit. In the circumstances, there is no illegality or irregularity warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Tahsildar
Uthamapalayam Taluk,
Theni District.
2. The Inspector of Police,
Uthamapalayam Police Station,
Uthamapalayam Taluk,
Theni District.
3. The District Munsif Court,
Uthamapalayam, Theni District,

+ 1 CC TO Mr.R.SHANKAR GANESH, ADVOCATE IN SR No. 5108.
+ 1 CC TO Mr.P.MUTHURAJA, ADVOCATE IN SR No. 4772

AM

TE/CM-MSA : 09/02/2017 : 4P/6C

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CMP(MD)No.759 of 2017(PD)
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