

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1076 of 2015
and M.P.No.1 of 2015

P.Madhan Mohan

.. Petitioner

Vs.

1.A.S.Rathnasabapathy
2.Kalpana
3.Sujatha
4.Pramila

(Respondents 2 to 4 represented by their
power of attorney agent
1st respondent A.S.Rathinasabapathy)

5.Komala Krishnamurthy
6.S.Shajahan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.11.2014 made in I.A.No.9496 of 2014 in O.S.No.6107 of 2012 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.T.S.Baskaran
For R1 to R4 : Mr.J.Nandagopal

For R5 : No appearance
For R6 : Mr.N.S.M.MD.Jafarullah

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 10.11.2014 made in I.A.No.9496 of 2014 in O.S.No.6107 of 2012 on the file of the VIII Assistant City Civil Court, Chennai.

2. The petitioner is the plaintiff and respondents 5 and 6 are the defendants in O.S.No.6107 of 2012 on the file of the VIII Assistant City Civil Court, Chennai. The petitioner filed the said suit against the respondents 5 and 6 for declaration that the lease deed dated 25.07.2012 executed by the fifth respondent in favour of the sixth respondent as null and void and not binding on the petitioner and for permanent injunction restraining the sixth respondent from interfering with his peaceful possession and enjoyment of the suit property. Fifth respondent filed written statement on 15.02.2013 and sixth respondent filed written statement in the month of

February 2013 and are contesting the suit. The trial commenced. At that stage, the respondents 1 to 4 filed I.A.No.9496 of 2014 for impleading themselves as defendants 3 to 6 in the said suit.

3. According to the respondents 1 to 4, the suit property was allotted to one Smt.Meenakshisundarammal @ Mrs.P.M.Jayaram. She executed a Will in favour of her younger brothers. The respondents 1 to 4 are residuary legatees in the Will executed by Smt.Meenakshisundarammal. They have filed O.P.No.684 of 2003 before this Court for the letters of administration with the Will annexed. The petitioner and fifth respondent are contesting the genuineness of the Will. O.P.No.684 of 2003 was converted as T.O.S.No.8 of 2004 and the same is pending. The petitioner suppressing the said fact filed the present suit without impleading respondents 1 to 4. In the circumstances, they are necessary and proper parties to the suit and without their presence, the suit cannot be proceeded and if any decree is passed in the suit, it will affect their claim of title to the suit property.

4. The petitioner and sixth respondent filed separate counter affidavit and opposed the said application. According to the

petitioner, in the partition suit O.S.No.2180 of 1996 filed by the fifth respondent, 1/6th share was allotted each to the petitioner and fifth respondent. The fifth respondent sold her share to a third party. Without having any title or right, the fifth respondent executed a lease deed dated 25.07.2012 in favour of the sixth respondent for the entire suit property. The suit is for declaration of lease deed dated 25.07.2012 as null and void and for permanent injunction against the sixth respondent. Unless T.O.S.No.8 of 2004 filed by the respondents 1 to 4 is ordered in their favour, they do not have any right or title over the suit property and prayed for dismissal of the application. The sixth respondent has also contended that unless T.O.S.No.8 of 2004 is decided, the respondents 1 to 4 are not necessary parties to the suit and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application holding that any decree passed in the suit will affect the interest of the respondents 1 to 4 and therefore, they are necessary and proper parties to the suit.

6. Against the said order dated 10.11.2014 made in I.A.No.9496 of 2014 in O.S.No.6107 of 2012, the present Civil Revision Petition is filed by the petitioner/plaintiff.

7. When the Civil Revision Petition is taken up for hearing, the learned counsel for the petitioner and respondents 1 to 4 contended that T.O.S.No.8 of 2004 filed by the respondents 1 to 4 was dismissed. The respondents 1 to 4 submitted that they have filed O.S.A.No.207 of 2017 and the same is pending before this Court. The learned counsel for the petitioner reiterated the averments made in the counter affidavit filed in the present application and the contentions raised in the grounds of Civil Revision Petition.

8. Heard the learned counsel for the petitioner as well as the respondents 1 to 4 and 6 and perused the materials available on record.

9. From the impugned order of the learned Judge and the materials available on record, it is seen that the petitioner filed the suit for declaration that the lease deed dated 25.07.2012 executed

by the fifth respondent in favour of the sixth respondent as null and void and not binding on the petitioner and for permanent injunction against the sixth respondent. The petitioner has not sought for any declaration of title in respect of the suit property. The title of the suit property is not an issue in the present suit. The claim of the respondents 1 to 4 is that they are the owners of the suit property based on the Will executed by Smt.Meenakshisundarammal @ Mrs.P.M.Jayaram and the subject matter in T.O.S.No.8 of 2004 was dismissed by this Court. They will get their right only when this Court decides the genuineness of the Will executed by Smt.Meenakshisundarammal @ Mrs.P.M.Jayaram in O.S.A.No.207 of 2017, which is pending on the file of this Court. Unless this Court decides O.S.A.No.207 of 2017 in favour of the respondents 1 to 4 that they are the owners of the suit property or residuary legatees, they do not have any title to the suit property.

10. In view of this fact and the fact that the suit filed by the petitioner is not for declaration of title and it is only for declaration of lease deed dated 25.07.2012 executed by the fifth respondent in favour of the sixth respondent as null and void and for permanent injunction only against the sixth respondent, the respondents 1 to 4

are not necessary parties to the suit and if any decree is passed in the present suit, it will not be binding on the respondents 1 to 4 and their claim in O.S.A.No.207 of 2017.

11. For the above reason, order of the learned Judge dated 10.11.2014 is liable to be set aside and it is hereby set aside. If any suit is filed for declaration of title in respect of the suit property, pending O.S.A.No.207 of 2017, it is open to the respondents 1 to 4 to take appropriate steps to get themselves impleaded.

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

07.02.2018

Index:Yes/No

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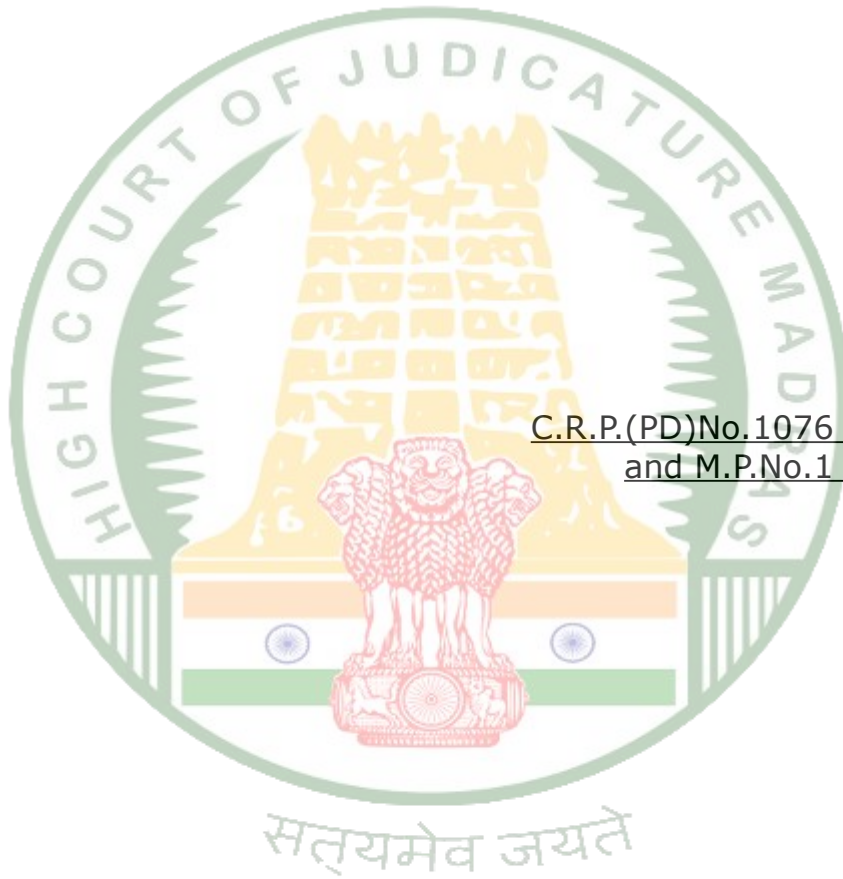
To

The VIII Assistant City Civil Judge
Chennai.

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V.M.VELUMANI,J.

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