

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.651 of 2015
& M.P.No.1 of 2015

Then Tamilselvi

.. Petitioner

Vs.

1.Tamilvanan
2.Matheswari
3.Arumugam

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.10.2014 made in I.A.No.384 of 2014 in O.S.No.90 of 2003 on the file of the Additional District Munsif Court, Namakkal.

For Petitioner : Mr.M.Santhanaraman

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 09.10.2014 made in I.A.No.384 of 2014 in O.S.No.90 of 2003 on the file of the Additional District Munsif Court, Namakkal.

2. The petitioner is third party, first respondent is plaintiff and

respondents 2 and 3 are the defendants in O.S.No.90 of 2003 on the file of the District Munsif Court, Namakkal. The first respondent filed said suit against the respondents 2 and 3 for permanent injunction restraining the respondents 2 and 3 from preventing the first respondent to construct bathrooms in P1 portion and for permanent injunction restraining the respondents 2 and 3 from interfering or encroaching or disturbing the land in P series, passage and canal along with S1, S2, K1 and K2 portion. The respondents 2 and 3 filed written statement on 10.04.2003 and are contesting the suit. When the suit was ripe for trial, the petitioner filed I.A.No.384 of 2014 for impleading herself as third defendant in the suit.

3. According to the petitioner, she filed O.S.No.106 of 2012 for partition against the respondents 1 and 2 and others and a preliminary decree was passed and final decree application filed by her is pending. The respondents are colluding together and created documents including the property of the petitioner and filed present suit. She came to know about the present suit through the son of the respondents 2 and 3. Therefore, the petitioner is necessary and proper party to the suit.

4. The first respondent filed counter affidavit and denied the

averments made in the affidavit filed in support of the said application. According to the first respondent, he is a party to the suit O.S.No.106 of 2012 and he has filed an application to set aside the preliminary decree passed in O.S.No.106 of 2012 filed by the petitioner. The present suit is filed in the year 2003 and after ten years, the petitioner has come out with the present application. According to first respondent, he sold 1 ½ acres of land for conducting marriage of the petitioner and has given 27 sovereigns of gold jewels to the petitioner. The property in question is his self acquired property and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and nature of the relief sought for in the suit, dismissed the application.

6. Against the said order of dismissal dated 09.10.2014 made in I.A.No.384 of 2014, the present Civil Revision Petition is filed by the petitioner/third party.

7. Heard the learned counsel for the petitioner and perused

the materials available on record. Though notice was served on the respondents and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

8. The first respondent filed said suit against the respondents 2 and 3 for permanent injunction restraining the respondents 2 and 3 from preventing the first respondent to construct bathrooms in P1 portion and for permanent injunction restraining the respondents 2 and 3 from interfering or encroaching or disturbing the land in P series, passage and canal along with S1, S2, K1 and K2 portion. In a suit for permanent injunction, the Court has to decide whether the plaintiff is in possession of the suit property and whether the defendants are interfering with the possession of the plaintiff. The title of the suit property is not an issue in the suit for permanent injunction. The petitioner has come out with the present application for impleading herself as party to the suit on the ground that in the suit filed by her for partition, a preliminary decree has been passed and application for final decree is pending. This will not be a ground for impleading the petitioner as third defendant in the present suit either as necessary or proper party. Further, according to the first

respondent, he has already filed an application to set aside the preliminary decree passed in O.S.No.106 of 2012.

9. According to the first respondent, the respondents 2 and 3 are interfering with his possession and enjoyment of the suit property and therefore, he is claiming decree of permanent injunction against the respondents 2 and 3. The petitioner is not a party to the suit and even if any decree is passed in the suit filed by the first respondent, it will be binding only on the respondents 2 and 3. In the circumstances, the petitioner is not a necessary and proper party to the suit.

10. The learned Judge considering all the above facts in proper perspective and nature of the relief sought for in the suit, 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 Judge dated 09.10.2014.

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

02.01.2018

Index : Yes/No
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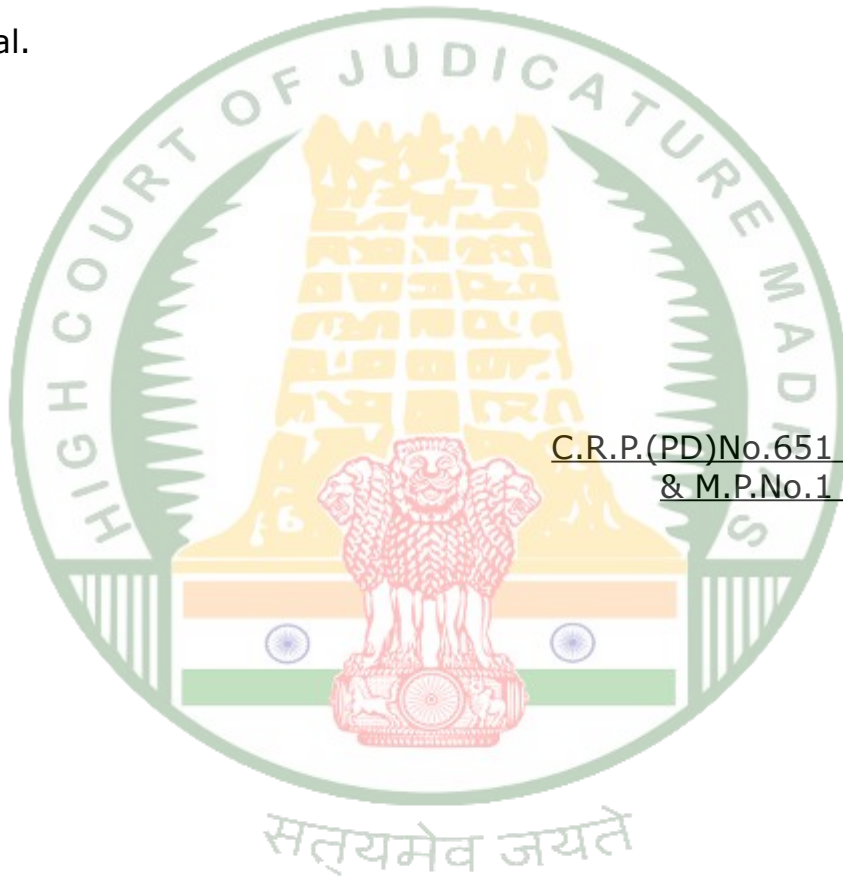
V.M.VELUMANI, J.

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To

The Additional District Munsif

Namakkal.



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