



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.09.2018

DELIVERED ON : 04.10.2018

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.1028 of 2015

and

M.P. (MD) No.1 of 2015

C.Radhakrishnan ..Petitioner/1st Respondent/Plaintiff

Vs.

1.R.Paramasivam ..1st Respondent/Petitioner/
Proposed Party

2.R.Meiyappan

3.Kaliappan

....2nd and 3rd Respondents/
2nd and 3rd Respondents/
2nd and 3rd Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.04.2015 passed in I.A.No.751 of 2013 in O.S.No.383 of 2002 by the District Munsif Court, Palani.

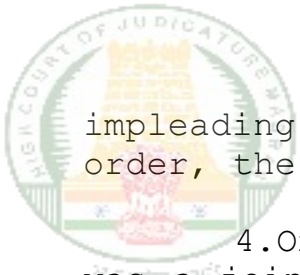
For Petitioner : Mr.S.Anand Chandrasekar
For M/s.Saravabhauman Associates
For Respondent No.1 : Mr.R.Vijayakumar
For Respondent No.2 : No Appearance
For Respondent No.3 : Dismissed vide Court order dated
14.12.2012

ORDER

Heard Mr.S.Anand Chandrasekar for M/s.Saravabhauman Associates, learned counsel appearing for the petitioner and Mr.R.Vijayakumar, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the fair and decreetal order dated 08.04.2015 passed in I.A.No.751 of 2013 in O.S.No.383 of 2002 by the District Munsif Court, Palani.

3.The suit is filed for declaration and for permanent injunction. The respondents 2 and 3 are the defendants in the suit. The 1st respondent filed a petition in I.A.No.751 of 2013 to implead himself as one of the defendant in the suit. The



impleading petition was allowed by the trial Court. Against the order, the petitioner has filed this petition.

4. On the side of the petitioner, it is stated that there was a joint patta in Survey Nos. 1205/1A1 and 1205/4 in the name of 27 persons. The vendor of the first respondent herein created a fraudulent document in the name of one Natarajan. A paper publication was given in the "Malai Malar" daily newspaper on 15.11.2010 and there was no reply. Within two to three days, the first respondent herein impleaded himself as one of the joint pattadar. The vendor of the first respondent herein is not having any right over the property. The first respondent was unnecessarily impleaded in the case.

5. On the side of the first respondent, it is stated that the vendor of the petitioner by name, Paramasivam purchased the property under four sale deeds to an extent of two acres and 80 cents but the petitioner has filed this case for an extent of 3 acres and 92 cents in Survey No. 1205. The respondents 2 and 3 are having 0.95 acres land and that land was sub divided as Survey No. 1205/1A2. The second respondent sold away the property on 15.11.2010 and handed over the possession. The patta was transferred to the name of the first respondent and the first respondent is also a necessary party to the suit.

6. On the side of the petitioner, it is stated that the revision petitioner filed a suit for declaration and injunction for first schedule property in Survey No. 1205/1A1 for an extent of 7 cents and for the second schedule property in Survey No. 1205/4 with an extent of 3 acres and 85 cents. The first respondent has not claimed the suit property and the first respondent is claiming right only over Survey No. 1205//1A2. The first respondent is not having any right over the property of the petitioner. The first petitioner is not a necessary party.

7. On the side of the first respondent, it is stated that in Survey No. 1205/4, the entire extent is 3 acres and 85 cents. The first respondent purchased a property in Survey No. 1205/1A1 from the second respondent herein. Survey No. 1205/1A2 is the portion within Survey No. 1205/1A1. The petitioner purchased only 2 acres and 79 cents. The petitioner's predecessor in title was having only 2 acres and 79 cents but this case was filed for an extent of 3 acres and 85 acres. The petitioner is entitled only for 2 acres and 79 cents. The balance land was purchased by the first respondent. In the counter filed by the petitioner herein, it is stated that "என் வசமுள்ள சொத்தை கிரயம் செய்துள்ளார்கள்." Survey No. 1205/1A2 is a part and parcel of Survey No. 1205/1A1. The contention of the petitioner in the I.A. Petition, filed by the first respondent, is that the deed of the first respondent is a fraudulent one. Only in the revision petition, the petitioner has taken a stand that the properties are different. The revision petitioner has



given a complaint against the first respondent. Patta stands in the name of the first respondent. If the property is measured without the knowledge of the first respondent, it will lead to multiplicity of cases and it may cause great injustice to the first respondent.

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8.The learned counsel appearing for the first respondent relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others** reported in **(2013) 5 Supreme Court Cases 397**, which reads as follows:

"Also, if purchaser pendente lite is not made party to pending suit, there may be a situation where transferor pendente lite may not defend title properly as he has no interest remaining, or may collude with plaintiff in which case interest of purchaser pendente lite will be ignored."

9.The learned counsel appearing for the first respondent relied on the Judgment passed by this Court in the case of **D. Raja Prabakaran v. Suyambulingam (Died)** reported in **2013 (2) MWN (Civil) 547**, which reads as follows:

"Held, purchasers pendente lite entitled to be impleaded in suit filed by vendor- Court ought to have impleaded Revision Petitioners as plaintiffs in suit, as they satisfied definition of Legal Representatives as mentioned in Section 2(11), as well contingency stipulated in Order 22, Rules 3 and 10."

10.Records perused. It is seen that the petitioner has filed the suit regarding survey Nos.1205/1A2 and 1205/4. It is stated that the first respondent purchased Survey No.1205/1A2. On the side of the petitioner, it is stated that the property purchased by the first respondent is a different property.

11.On the side of the first respondent, it is stated that survey Nos.1205/1A2 is a portion of Survey No.1205/1A1. It seems that both the petitioner and the first respondent purchased the property in Survey No.1205 which is subsequently sub divided.

12.In the above circumstances, impleading the first respondent is necessary. An opportunity for the first respondent is to be given in the interest of justice. The petitioner himself has admitted that there is a joint patta in the name of the first respondent. In the above circumstances, the first respondent is a necessary party to the suit and no prejudice will be caused to the petitioner herein in impleading the first respondent. The suit is for declaration of title and as the first respondent raised a



cloud over the title, he has to be added a necessary party. There is nothing sufficient enough to interfere the order passed by the trial Court. This Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-III)

To

The District Munsif, Virudhunagar.

+ 1 CC TO MR.R.VIJAYAKUMAR, ADVOCATE IN SR NO.89040
+ 1 CC TO M/s.SARAVABHAUMAN ASSOCIATES, IN SR NO.88627

mrn

BU/PM/SAR-III :26.10.2018 : 4P/4C

C.R.P. (PD) (MD) No.1028 of 2015
04.10.2018