



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.2605 of 2016 (PD)

and

C.M.P. (MD) Nos.12304 & 12305 of 2016

Anitha

...Petitioner/Respondent

Vs.

1.M.Esakkiammal

2.Minor Rosy

...Respondents/Plaintiffs

[Minor second respondent is represented by
the first respondent - her aunty and next friend]

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.336 of 2013 in O.S.No.82 of 2013 dated 17.11.2016, on the file of the Additional District Munsif Court, Ambasumuthiram.

For Petitioner : Mr.F.X.Eugene

For Respondents : No appearance

ORDER

The defendant is O.S.No.82 of 2013 on the file of the Additional District Munsif, Ambasumuthiram, is the revision petitioner. The said suit was filed by the respondents herein seeking the relief of bare injunction. In the said suit, an interim injunction was granted in I.A.No.163 of 2013. In the said interlocutory application, the revision petitioner had entered appearance and also filed her counter affidavit. The said I.A.No.163 of 2013 is yet to be finally disposed of. In the meanwhile, contending that the respondents have been unlawfully dispossessed, I.A.No.336 of 2013 was filed for restoring their possession. The said interlocutory application was allowed by order dated 17.11.2016. Questioning the same, the present civil revision petition has been filed.

2. Though the respondents have been served and their names appear in the cause list, they have not chosen to enter appearance



either in person or through Counsel.

3. Heard the learned Counsel for the revision petitioner.

4. As rightly contended by the learned Counsel for the revision petitioner, the second respondent herein, namely, Minor Rosy, is not the daughter of the first respondent herein. It is pointed out that her father effected a settlement in respect of the suit property in favour of her mother, namely, Muthulakshmi, who sold the suit property in favour of the revision petitioner's vendor on 04.05.2012. It is contended that the revision petitioner purchased the suit property from her vendor on 14.12.2012. Thus, according to the revision petitioner, the second respondent, Minor Rosy, has no interest, whatsoever, in the suit property. In order to get over the fact that her own father had sold the property in question, she has been wantonly represented by the first respondent herein. The first respondent is only the aunty of the second respondent. Obviously, she cannot represent the second respondent, without the express orders of the Court, more so, when her parents are very much alive.

5. Another contention raised by the learned Counsel for the revision petitioner is that when the first interlocutory application, namely, I.A.No.163 of 2013 is yet to be finally disposed of and possession yet to be determined, the present interlocutory application in I.A.No.336 of 2013 ought not to have been taken up. This Court finds considerable force in the said contention. It is also seen that only documents were marked on the side of the respondents herein. On either side, oral evidence was not adduced. If there has been forcible dispossession, definitely, oral evidence ought to be forthcoming on that aspect. Therefore, the order impugned in the civil revision petition is liable to be set aside and the same is accordingly, set aside.

6. In result, this civil revision petition is allowed. The matter is remitted to the file of the Court below. The Court below shall take up I.A.No.336 of 2013 along with I.A.No.163 of 2013 and dispose of the same, together, in the manner known to law, after hearing both the parties. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



To

The Additional District Munsif,
Ambasumuthiram.

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+ 1 CC TO MR.F.X.EUGENE, ADVOCATE IN SR NO.83489

GK

BU/SKN/SAR-II : 01.10.2018 : 3P/3C

C.R.P. (MD) No. 2605 of 2016 (PD)
and
C.M.P. (MD) Nos. 12304 & 12305 of 2016
11.09.2018