



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.04.2018
CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
C.R.P. (NPD) (MD) No.118 of 2013

WEB COPY

Veerapathira Swami Thirukovil,
through its present Trustee,
Ganesan

:Petitioner/4th Respondent

vs.

....1st Respondent/Planidiff

- 1.R.Ariraman
- 2.Jeganathan
- 3.Pandian
- 4.Mangaleswari
- 5.Lakshmanan
- 6.Rajalakshmi
- 7.Murugan
- 8.Usha

:Respondents 2to8/
Defendants 2to8

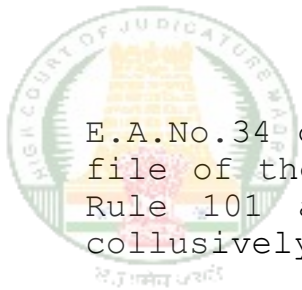
PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the fair and decreetal order dated 30.10.2012, made in E.A.No.34 of 2010 in E.P.No.8 of 2009 in O.S.No.238 of 1980 on the file of the District Munsif Court, Ramanathanapuram.

For Petitioner : Mr.H.Velavadas
For Respondents : No Appearance

ORDER

This civil revision petition has been filed by the fourth defendant in the suit. The fourth defendant in the suit has filed a petition under Order 21 Rule 101 and Rule 58 of CPC, stating that the plaintiff / respondent in the suit cannot be permitted to prosecute the execution petition to execute the decree.

2.Originally, the suit in O.S.No.238 of 1980, on the file of the District Munsif Court, Ramanathanapuram, was filed by the respondent for declaration of title and for recovery of possession after dismantling the superstructure put up by the defendants. Though the fourth defendant in the suit claimed title to the property and the other defendants claimed tenancy under the fourth defendant, the suit was decreed after rejecting the contention of the defendants in the suit. Thereafter, the first respondent / plaintiff in the suit filed a petition in E.P.No.8 of 2009, before the District Munsif Court, Ramanathanapuram. In the pending execution petition, the fourth defendant in the suit, filed a petition in



E.A.No.34 of 2010 in E.P.No.8 of 2009 in O.S.No.238 of 1980 on the file of the District Munsif Court, Ramanathanapuram, under Order 21 Rule 101 and Rule 58 of CPC, stating that the decree has been collusively obtained by showing one Lakshmanan as a trustee.

3.The lower Court dismissed the said petition by holding that the fourth defendant, being a party to the suit cannot maintain a petition under Order 21 Rule 101 of CPC. Since the petition is not for attachment, the order has been passed stating that the petition filed under Order 21 Rule 101 and Rule 58 also is improper and not maintainable. As against the order passed by the lower Court, the fourth defendant in the suit has filed the above civil revision petition.

4.The fact that the revision petitioner is the fourth defendant in the suit is not disputed. The fact that the fourth defendant has been represented by the new trustee will not give a different status as a third party to suit. As a matter of fact, the revision petitioner has been described as fourth defendant in the suit. It is to be noted that the petitioner, instead of filing the petition under Section 47 of C.P.C., or an appeal filed, the petition wrongly misquoting the provisions of law which is meant for a third party obstructor. The petition filed by the petitioner cannot be entertained under Order 21 Rule 97, which can be made only by a third party, if he has got an independent claim. Such claim can be independently decided and all questions relating to right, title, interest in respect of the property arise between the parties, can also be decided by the Court in such an application. In this case, the revision petitioner, who is the fourth defendant and who suffered a decree cannot raise any independent claim in execution, after suffering a decree. The application filed by the petitioner is wholly misconceived. Hence this civil revision petition is liable to be dismissed.

5.Accordingly, the civil revision petition is dismissed and the order in E.A.No.34 of 2010 in E.P.No.8 of 2009 in O.S.No.238 of 1980 passed by the District Munsif, Ramanathanapuram, is confirmed. However, there is no order as to costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Munsif Court,
<https://hcservices.ecourts.gov.in/hcservices/>
Ramanathanapuram.



2. The Section Officer,
Vernacular Records, (2Copies)
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.H.Velavadhas Advocate in SR.No. 63518.

CMR

DS/SV/MMS/SAR-1 1: 21.05.2018: 3P/5C

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