

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 05.11.2019

Orders Pronounced on : 11.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.No.4978 of 2011 and
M.P.No.1 of 2011

Dhandapani

..Petitioner

Vs.

1.Ramasamy
2.Elangovan
3.Kaliyaperumal

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.08.2011 passed in I.A.No.793 of 2011 in O.S.No.87 of 2009 on the file of the learned II Additional District Munsif, Villupuram.

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For Petitioner : Mr.N.Suresh

For Respondents : No Appearance

ORDER:

Aggrieved over the order dated 17.08.2011 passed in I.A.No.793 of 2011 in O.S.No.87 of 2009 on the file of the learned II Additional District Munsif, Villupuram, the petitioner who is the third party to the suit filed this Civil Revision Petition and prayed to set aside the fair and decreetal order passed in I.A.No.793 of 2011.

2.Before the trial court, the first respondent Ramasamy in this Civil Revision Petition filed a suit as against the second and third respondents in O.S.No.87 of 2009 and seeks the relief of permanent injunction restraining the second and third respondents from interfering with his peaceful possession and enjoyment of the property. During the pendency of the suit, on 27.08.2009, the petitioner herein purchased the suit property from the first respondent. Thereafter he filed an application under Order 1 Rule 10 (2) of Code of Civil Procedure for impleading him as second plaintiff in the said suit. The learned II Additional District Munsif, Villupuram after hearing the objection raised by the second respondent in this Civil Revision Petition by order dated 17.08.2011 dismissed the application filed by the petitioner. In the impugned

order, the learned II Additional District Munsif, Villupuram observed as since the right vested with the first respondent is transferred in favour of the petitioner during the pendency of the suit, Section 52 of Transfer of Property Act, 1882 is attracted and thereby the petitioner cannot become a necessary and property party to the suit and therefore it is not necessary to implead the revision petitioner as second plaintiff. Aggrieved over the same, the petitioner is before this Court with this Civil Revision Petition.

3.The learned counsel appearing for the petitioner would contend that since the right of the suit property is transferred in the name of the petitioner, for better adjudication impleading the petitioner as second plaintiff is very much necessary. It is usual if a person who is having the right over the property sold the same in favour of any other person, he loses the interest in the proceeding initiated. So, for better adjudication impleading the petitioner is very much necessary.

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4.In respect to the respondents 1 to 3, either the respondents or his counsel has not appeared before this Court. Hence, the arguments of the respondents is suo moto closed.

5.Now appreciating the averments set out in the plaint filed by the first respondent, he has averred that before filing the suit for permanent injunction, he has filed a suit in O.S.No.187 of 1997 as against the second respondent and against his father for the relief of partition. The said suit was dismissed by the trial court and in the appeal preliminary decree has been passed in favour of the first respondent. The said dispute went upto this Court in S.A.No.2030 of 2004 and the same was dismissed by this Court on 26.11.2004 after confirming the preliminary decree passed in favour of the first respondent. In the execution proceedings, partition was effected and on 31.05.2008, the suit property was handed over to the first respondent. In respect to the same, the defendant filed written statement stating that delivery is only paper delivery. Further final decree has been passed apart from their knowledge. So in the written statement filed by the second and third respondents, he has admitted that delivery was effected in favour of the first respondent. Further as of now, the said final decree has not been set aside. Only in the said occasion, alleging that the respondents 2 and 3 attempted to interfere with his possession, the first respondent herein filed the suit. It is not in dispute that the

petitioner has purchased the suit property during the pendency of the suit.

6.In this occasion, it is necessary to see whether cause of action arosed for the suit filed by the first respondent is survives on the petitioner or not. In this aspect, the learned counsel appearing for the petitioner relied upon the judgment of **V.Ravimenon Vs. R.Ebinessar and Others** reported in **(2009) 3 MLJ 915**, wherein this Court has observed as follows:

"Pendente Lite purchaser from the plaintiff in a suit for permanent injunction is entitled to be impleaded as a party to the suit, in view of the judgment in Savitri Devi Vs. District Judge, Gorakhpur AIR 1999 Superme Court 976"

7.Further in the same judgment, in paragraph 13, this Court has held as follows:

"13.I respectfully follow the decision rendered by the Larger Bench of the Hon'ble Supreme Court in Savitri Devi v. District Judge, Gorakhpur and Others (supra) and hold that the impleadment of second respondent in the suit as second plaintiff is essential. It cannot be stated that the cause of action will change. Whatever rights the first respondent was possessing were derived by the second respondent

and the cause of action as on the date of sale alone will get introduced in the plaint and such fact would no way prejudice the rights of the petitioner."

8. Apart from that, in the judgment of **Savitri Devi Vs. District Judge, Gorakhpur and others** reported in **AIR 1999 SC 976**, our Hon'ble Apex Court has held in paragraph 9 as follows:

"9. Order I, Rule 10 C.P.C. enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in [the Code](#)."

9. So, applying the principles set out in the earlier decisions in this case also, as per the contentions raised by the respondents 2 and 3, dispute between the first respondent and the respondents 2 and 3 are not completed so far. As per the case of the respondents 2 and 3, as of now they have filed an application to set aside the ex parte final decree which already passed in favour of the first respondent.

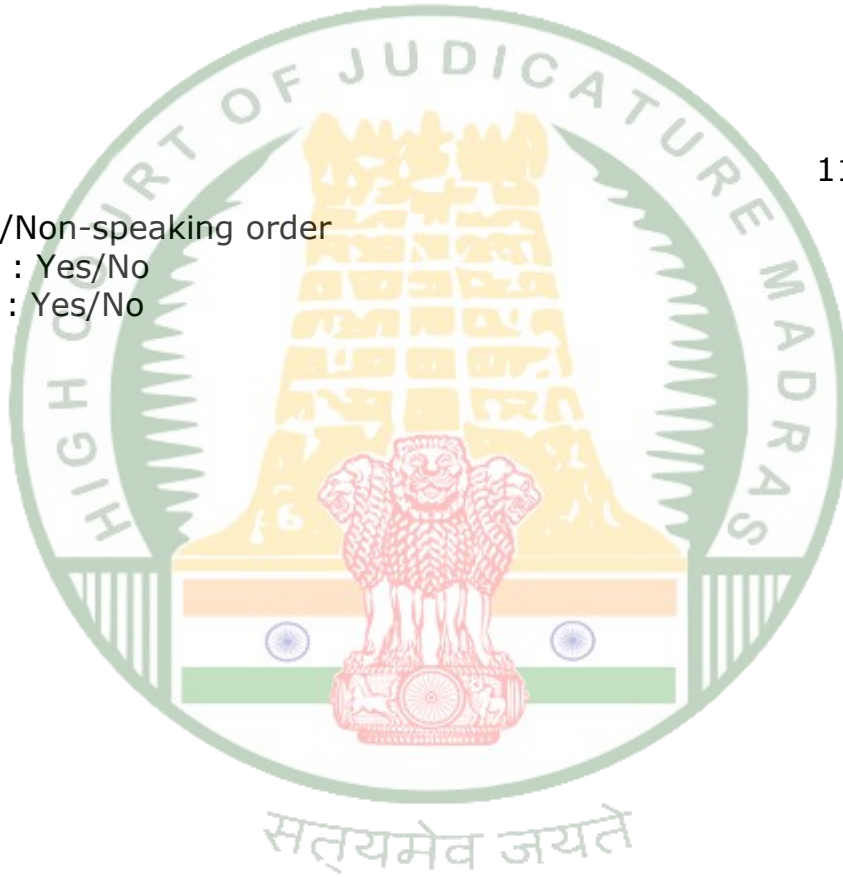
10.Since the suit property was purchased by the petitioner, the result of the suit proceedings will leads to the petitioner alone. As already observed, as per the judgment rendered in **V.Ravimenon case [cited supra]**, in a suit filed for relief of permanent injunction, subsequent purchaser is entitled to implead as a party in the suit. The said judgment is on the principle laid down by our Hon'ble Apex Court in **Savitri Devi case [cited supra]**. Based on the said principle, in this case also the petitioner being the subsequent purchaser, is entitled to implead as a party to the said proceedings. In the impugned order, without following the said principle, only by mentioning the consequences of Section 52 of Transfer of Property Act, the learned II Additional District Munsif, Villupuram has dismissed the application. So the findings rendered by the learned II Additional District Munsif, Villupuram is against the principle of law made in **Savitri Devi case [cited supra]**. Therefore, I am of the opinion that interference is necessary in the impugned order passed by the learned II Additional District Munsif, Villupuram.

11.Accordingly, in the light of the above observations, the Civil Revision Petition is allowed. After carrying out necessary

amendments in the plaint, the learned II Additional District Munsif, Villupuram is directed to dispose the suit in O.S.No.87 of 2009 as early as possible, preferably within a period of one month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

11.11.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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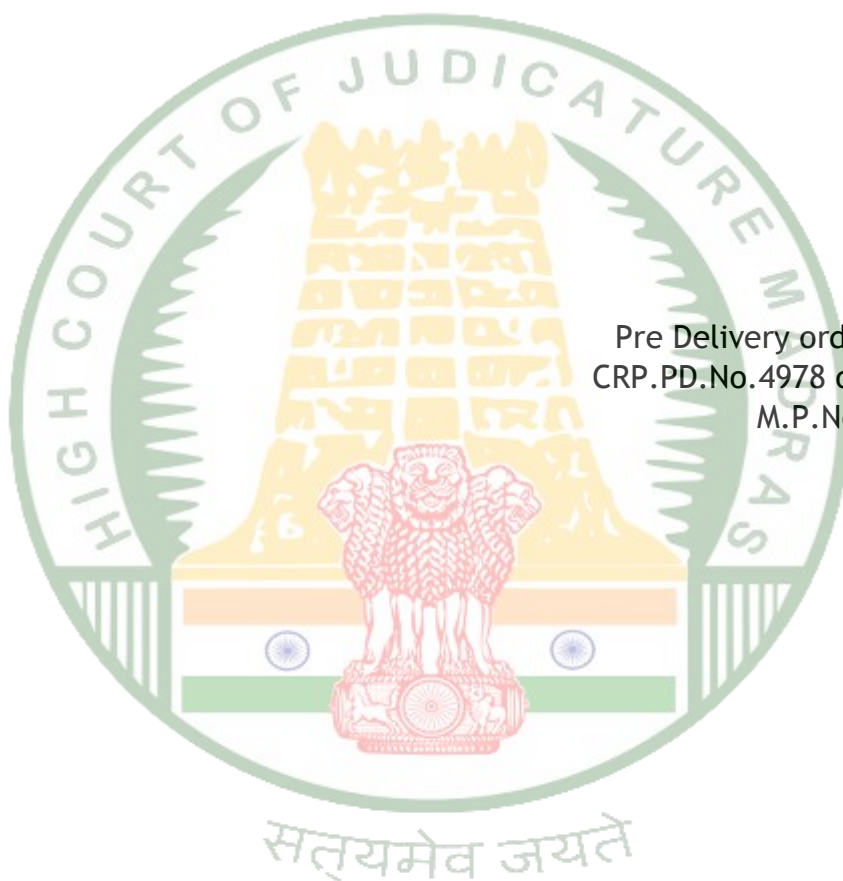
To
The learned II Additional District Munsif,
Villupuram.



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R.PONGIAPPAN,J.

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Pre Delivery order made in
CRP.PD.No.4978 of 2011 and
M.P.No.1 of 2011

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