

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

C.R.P.(PD).No.2657 of 2013 and
M.P.No.1 of 2013

C.Akbar Basha,
S/o.Fazlur Rahman,
No.2/3, Vaniyar Street,
Ambur, Vellore District.

... Petitioner/plaintiff

Vs.

1. Dilshad Begum,
D/o.Mohammed Yahya.

2. Liyakat Ali,
S/o.Mohammed Yahya.

3. Rashed Ahmed,
S/o.Mohammed Yahya.

... Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 02.04.2013 in C.M.A.No.4 of 2012 on the file of the Subordinate Court, Vaniyambadi, Vellore District, confirming the order dated 06.11.2012 in I.A.No.95 of 2012 in O.S.No.49 of 2012 on the file of the Principal District Munsif Court, Ambur, Vellore District.

For Petitioner : Mr.S.Kothandaraman

For Respondents : Mr.L.K.Manjunath

ORDER

The above Civil Revision Petition is filed by the petitioner/ plaintiff challenging the order dated 02.04.2013 in C.M.A.No.4 of 2012 on the file of the Subordinate Court, Vaniyambadi, Vellore District, confirming the order dated 06.11.2012 in I.A.No.95 of 2012 in O.S.No.49 of 2012 on the file of the Principal District Munsif Court, Ambur, Vellore District.

2. The suit has been filed against the respondents for permanent injunction on the ground that the revision petitioner has purchased the property from Sabiulla, the husband of the first respondent herein. The revision petitioner has moved an application for temporary injunction which was opposed by the respondents on the ground that the property purchased by the revision petitioner was subjected to charge created in the proceedings between herself and her husband in O.S.No.296 of 1993. Since, there is a charge created, there was no prima facie case in favour of the revision petitioner and dismissed the application.

3. The learned counsel appearing for the revision petitioner states that though there is a charge over the property, the property is a vacant site and so charge cannot be enforced against him since, he is a bonafide purchaser without any knowledge of the said charge. I

am afraid that this is a question of fact, and it cannot be gone that at this stage to find out whether the revision petitioner is the bonafide purchaser without notice of charge or not. It has to be gone only in the trial and not in this interim applications. Therefore, I am of the view that it has to be decided only before the trial Court and there must be separate issue in this regard. Admittedly, the property purchased by the revision petitioner is also the subject matter of the suit in O.S.No.29 of 1993. In such view of the matter, I do not intend to interfere with the order passed by the trial Court. At the same time, the trial Court is directed to dispose of the suit on merits within a period of four months from the date of receipt of a copy of this order and without being influenced by any of the observations made by this Court or the order passed in the interlocutory application which is a subject matter of this revision. Whether or not the revision petitioner is a bonafide purchaser without notice of charge has to be considered separately on the basis of the evidence adduced by the parties.

With the above observations, the civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

11.04.2019

Index: Yes / No
Speaking/non-speaking order
nsd

N.SATHISH KUMAR,J.,

nsd

To

1. The Subordinate Judge,
Vaniyambadi, Vellore District.
2. The Principal District Munsif,
Ambur, Vellore District.



C.R.P.(PD).No.2657 of 2013

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