

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.3756 of 2014
and
Miscellaneous Petition No.1 of 2014

Chidambaram Poosari

Petitioner/Plaintiff

Vs

1.Arul Prabu
2.Ganesan

Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to allow the Civil Revision Petition by setting aside the order and decreetal order dated 27.06.2014 passed in I.A.No.69 of 2014 in O.S.No.286 of 2011 on the file of the III Additional District Munsif Court, Kallakurichi.

For Petitioner : Ms.R.Thanjan
For R1 & R2 : No Appearance

ORDER

The Civil Revision Petition has been directed against the order passed in I.A.No.69 of 2014 in O.S.No.286 of 2011 on the file of the III Additional District Munsif Court,Kallakurichi.

2 Before the trial Court, the petitioner herein filed a suit in O.S.No.286 of 2011 as against these respondents and seeking the relief of declaration declaring that the plaintiff is the absolute owner of the suit

property, consequently, he prayed for an order of injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the suit schedule property.

3 Pending the suit, the plaintiff filed an application in I.A.No.69 of 2011 under Order 1 Rule 10 CPC., with the prayer to implead one Durai Sankar as a 3rd defendant in the above referred suit. The learned III Additional District Munsif, Kallakurichi, after affording an opportunity to other two defendants had dismissed the application on 27.06.2014, against the said order the present Civil Revision Petition is preferred.

4 The learned counsel appearing for the petitioner/plaintiff would contend that to know the consequence of suit proceedings and for better adjudication, the proposed defendant is a just and necessary party.

5 The learned District Munsif while dismissing the petition in I.A.No.69 of 2014 held that only because of the reason that the proposed defendant is a mortgagor, he need not be impleaded as a necessary party to the suit, further he has held as for the sole reason that the suit property is mortgaged with the proposed defendants the right of the plaintiff cannot be changed.

6 Now, perusing the factual aspects found in the plaint filed before the trial Court, the petitioner herein has not stated anything about the mortgage made in respect to the suit property. However, in the written

statement filed by the first defendant in para No.5 he has clearly stated that the defendants have mortgaged the said property in favour of Duraisankar, S/o.Duraisamy vide registered mortgage deed dated 17.06.2009 for a sum of Rs.1,00,000/- which is still subsisting. So, it is the contention of the defendants that the suit property is a mortgage property. On the other hand, on going through the averments made in plaint, the plaintiff has stated that the mother of the plaintiff namely Mahalakshmi Ammal has executed the gift deed in respect to the suit property in favour of the plaintiff on 19.01.2006. According to him, he is the absolute owner to the suit property, further he added in the plaint in Para No.3 as from the date of gift, he is in possession and thereby he is entitled to the relief of declaration and injunction. So culling out the circumstances projected by the plaintiff, he is alone in the possession of the suit property. In the said circumstances, since the case filed by the plaintiff for the relief of declaration and injunction, the plaintiff has to prove the title and possession of the suit property and there is no necessity on the side of the defendants to disprove the case of the plaintiff.

7 In the said circumstances, even though the suit property is mortgaged with proposed defendant he is not a necessary party to decide the title. The learned trial Court judge has correctly taken into consideration the said fact and had arrived as the decision that only because of the reason that the property was mortgaged with proposed defendant, the right and title of the plaintiff cannot be disturbed. Therefore, for deciding the issues raised in the plaint the proposed defendant is an unnecessary party.

Accordingly, I am of the opinion that interference of this Court is not necessary in the order passed by the trial Court in I.A.No.69 of 2014 in O.S.No.286 of 2011 for the reasons stated above.

8 In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.09.2019

sbn

To

The III Additional District Munsif Court,
Kallakurichi.

C.R.P.(PD)No.3756 of 2014

R.PONGIAPPAN, J.,
sbn

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and
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