



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P. (NPD) (MD) .Nos.1288 & 1289 of 2011

R.Annakodi

.. Petitioner/3rd Party

Vs.

1.P.C.Rajendran

.. Respondent/Respondent

2.The Irulayee Ammal Trust,
through its Trustee and Secretary,
Mr.Ramasamy Pillai,
Usilampatti Taluk,
Madurai District.

3.V.Ganapathi Sundaram,

V.Sivarama Krishnan

.. Respondents/Defendants

COMMON Prayer: Civil Revision Petitions filed under Section 115 of the Civil Procedure Code, against the fair and decreetal orders dated 25.04.2011 passed in I.A.Nos.9 & 10 of 2010 in O.S.No.59 of 2001 on the file of the District Munsif cum Judicial Magistrate, Usilampatti.

(In both petitions)

For Petitioner : Mr.J.John

For Respondents : Mr.T.Krishnamoorthy for R1

Mr.P.Paranthaman for R3

R2 - Dismissed vide order dated 11.01.2016

COMMON ORDER

These civil revision petitions are directed against the orders passed in I.A.Nos.9 & 10 of 2010 in O.S.No.59 of 2001. A third party to the suit in O.S.No.59 of 2001 on the file of District Munsif Court, Usilampatti, is the revision petitioner.

2.The brief facts that are necessary to dispose of these civil revision petitions are as follows:

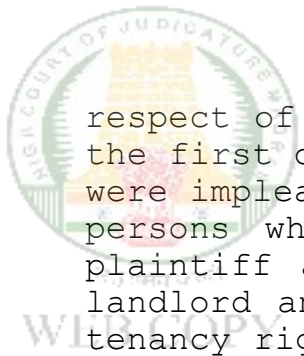
<https://hcservices.ecourts.gov.in/hcservices/>



The first respondent in this civil revision petition, filed a suit in O.S.No.59 of 2001 for permanent injunction as against respondents 2 to 4 herein. The said suit was filed on 13.06.2001 and an exparte decree was passed on 18.11.2003 granting permanent injunction in favour of the first respondent. The revision petitioner purchased the property in the year 2009 from respondents 3 and 4 who are defendants 2 and 3 in the suit. The revision petitioner filed I.A.No.9 of 2010 to implead them as a party to the suit in O.S.No.59 of 2001. Another application was filed in I.A.No.10 of 2010 to set aside the exparte decree, dated 18.11.2003 passed in O.S.No.59 of 2001. The lower Court dismissed both the applications. As against the dismissal of the application in I.A.No.9 of 2010, C.R.P.(MD).No.1288 of 2011 has been filed by the revision petitioner. Similarly, as against the dismissal of I.A.No.10 of 2010, C.R.P.(MD).No.1289 of 2011 has been filed.

3.The lower Court dismissed the petition on the short ground that the petitioner who is the purchaser of the property, a long time after from the decree in the suit, has no right to question the exparte decree, after several years. Since the petition to set aside the exparte decree in I.A.No.9 of 2010 was dismissed, the application in I.A.No.10 of 2010 was also dismissed as a consequential order. The petitioner is a purchaser of property from the defendant in the suit by a document, dated 23.07.2009. By the time, when the property was sold in favour of the petitioner, the petitioner's vendor had suffered a decree for permanent injunction. From the exparte decree that was passed in the suit, it is evident that the defendants contested the suit by engaging Advocates and did not appear thereafter. The person who had suffered a decree for permanent injunction has sold the property claiming that he is the owner of the property, suppressing the judgment and decree in the suit. The judgment and exparte decree is also binding not only the defendants in the suit, but also the subsequent alienees. The fact that the petitioner had no knowledge about the exparte decree, cannot be taken advantage of him to file a petition to set aside the exparte decree after this length of time. By sale, the petitioner has no right as against the decree holder. In this case, the petitioner has no independent right and he cannot give life to the litigation by acquiring the property, seven years after the decree was passed against his vendors whose right was determined in the suit.

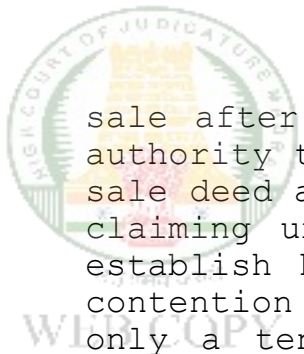
4.The learned counsel for the petitioner today filed an Additional typed set containing a decree in earlier suit in O.S.No.44 of 1927 and the copy of the suit register extract in O.S.No.84 of 1941. He also produced the copy of the plaint in O.S.No.59 of 2001. From the documents, the learned counsel submitted that the plaintiff in the suit is only a lessee and therefore he is not entitled to get permanent injunction as against the defendants. The plaint in O.S.No.59 of 2001 clearly reveals



respect of the land under a trust which is in the Administration of the first defendant in the suit. The defendants 2 and 3 in the suit were impleaded because it is alleged in the plaint that they are the persons who are trying to interfere with the possession of the plaintiff as a lessee. The first defendant was stated to be the landlord and hence the plaintiff though did not claim title, claim tenancy right under the first defendant. It is also alleged in the plaint under the plaintiff was a tenant with the first defendant who is the person entitled to represent the trust. Stating that the defendants 2 and 3 are trying to interfere with the peaceful possession and enjoyment of the suit property by the plaintiff, the suit had been filed. Therefore, the contention of the learned counsel appearing for the petitioner that the tenant is not entitled to ask for injunction against the owner has no substance. As pointed out earlier, the revision petitioners claimed right only under the second defendant in the suit. The injunction is only in tune with the right of tenancy claimed by the plaintiff. It is in the said circumstances, this Court is unable to find any valid point or legal issue in favour of the second defendant who had sold the property after suffering a decree for injunction in 2003. The second defendant who has no manner of right over the property of trust cannot execute a sale deed as if he is the trustee lawfully entitled to deal with the property. It is also contended that there are subsequent suits filed by the parties and the right of revision petitioner will be put to Jeopardy if the ex-parte decree is not set aside.

6.This Court is unable to accept the arguments. The petitioner is claiming under a person who has no right to deal with the property of trust. Subsequent suits will be dealt with on merits independently. That cannot be a reason to be cited to give hope and right to the revision petitioner to set aside the exparte decree in the present suit in O.S.No.59 of 2001.

7.The learned counsel for the petitioner relied upon the judgment of the learned single Judge of this Court in the case of M.P.Kanoi and 4 others Vs. Mr.Palani Prop. M.P.Builders, reported in 2001 (3) CTC 452 for the proposition that subsequent purchasers are also necessary parties in the suit for specific performance. It is also stated there in that a third party to the suit under Section 151 of the Civil Procedure Code can file a petition to set aside the ex-parte decree by impleading himself if he has a valid interest in the subject matter of suit. The proposition advanced by this Court in the above judgment is that a subsequent purchasers can also be impleaded as a party to the proceedings. Order 21 Rule 10 gives the right to any one who claims right under any of the party to the proceeding. In the present case, the petition is filed to set aside the ex-parte decree that was passed in the year 2003. The persons who suffered a decree for injunction had conveyed the property in 2009 in favour of the revision petitioner. The revision petitioner of the said sale has approached this Court. The



sale after the decree is fraudulent. It is not known under what authority the second defendant who suffered a decree could execute a sale deed assuming that he is the owner of the property. The person claiming under second defendant cannot be given any indulgence to establish his case of title. In the peculiar circumstances, the contention of the revision petitioner that the first respondent was only a tenant cannot be accepted. This Court therefore has no reason to interfere with the order of lower Court, since the order of lower Court is supported by reasons.

8. These civil revision petitions are dismissed. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Munsif cum Judicial Magistrate, Usilampatti.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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