



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (MD) Nos.1827 & 1828 of 2011
and
M.P. (MD) No.1 of 2011

Viyahappan ... Petitioner in both C.R.Ps.,
vs.

1.Vasantha

2.Kumar ... Respondents in both C.R.Ps.,

Common Prayer:-These Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.07.2011 in I.A.Nos.795 & 796 of 2010 in O.S.No.365 of 2009 on the file of the Principal District Munsif, Padmanabhapuram.

For Petitioner
in both C.R.Ps., : Mr.N.S.Ramakrishna Dhas

For Respondents
in both C.R.Ps., : Mr.V.M.Balamohan Thambi

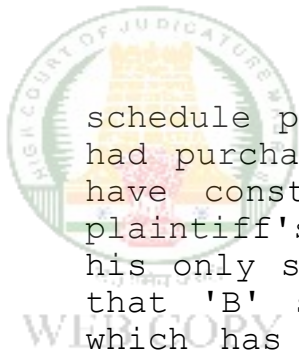
COMMON ORDER

Since the issue raised in the above two revision petitions are one and the same, this Court is inclined to pass the common order

2.The plaintiff in the suit in O.S.No.365 of 2009 is the revision petitioner in both the revisions.

3.These revision petitions are filed challenging the order passed in I.A.Nos.795 & 796 of 2010 in O.S.No.365 of 2009 on the file of the Principal District Munsif, Padmanabhapuram, dated 05.07.2011.

4.The learned counsel appearing for the petitioner/plaintiff would contend that the plaintiff had filed a suit in O.S.No.365 of 2009 for permanent injunction stating that in the suit schedule, 'A'



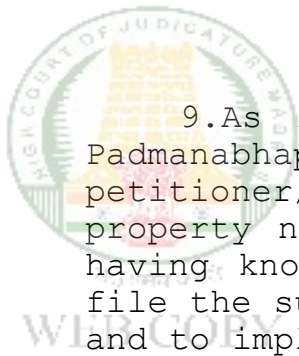
schedule property originally belonged to his wife, Saraswathy, who had purchased the same on 25.06.1966 and after the purchase, they have constructed a house and resided therein. Thereafter, the plaintiff's wife died on 01.05.1998 leaving behind the plaintiff and his only son Francis as her legal heirs. He would further contend that 'B' schedule property originally belonged to the plaintiff, which has been purchased by him on 14.02.2007 and 'C' schedule property is a Poramboke land, which is in the possession and enjoyment of the plaintiff for more than 40 years right from the date of purchase of the 'A' schedule property.

5.The learned counsel would further contend that the first respondent/first defendant is residing adjacent to the 'C' schedule property on the eastern side and there is a well-defined compound wall constructed by her vendor, long back prior to sale to the first defendant on her eastern boundary. The second respondent/second defendant is residing 2 kms. away from the plaint schedule properties and the defendants are utter strangers to the plaint schedule property by the plaintiff. However, the defendants had started interfering with the peaceful possession and enjoyment of the plaint schedule property by the plaintiff and therefore, left with no other alternative, the plaintiff had come forward with the suit in question.

6.The respondents/defendants had filed a written statement by inter alia contending that with regard to the same issue, the plaintiff has filed another suit in O.S.No.482 of 2008 against one Vijaya and in the said suit, the very same pleadings have been taken out by the plaintiff and ultimately, the suit was dismissed for default by the Court below. He would further contend that after the filing of the written statement in O.S.No.365 of 2009 suit, the plaintiff has come forward with two applications in I.A.Nos.795 & 796 of 2010 to permit him to amend the plaint as detailed in the petition and to implead one Vasantha as third defendant in the suit to defend his case.

7.After hearing the arguments advanced made on either side, the learned Principal District Munsif, Padmanabhapuram, was pleased to dismiss the said applications on the ground that even in the earlier suit in O.S.No.482 of 2008 filed by the plaintiff, the vendor of the defendants namely, Vijaya, had taken out the defence that she had alienated the property to the defendants and that she has no longer any interest in the said suit and the plaintiff has allowed to dismiss the suit for default and has filed the said applications without making any mention of the earlier suit. Challenging the orders passed in the applications in I.A.Nos.795 & 796 of 2010, the plaintiff is before this Court.

8.Heard the learned counsel on either side and perused the papers.



9.As rightly held by the learned Principal District Munsif, Padmanabhapuram, even in the earlier proceedings, the petitioner/plaintiff was put on notice about the fact that the property no longer belonged to the proposed party, Vijaya, despite having knowledge about the same, the plaintiff has chosen only to file the suit for bare injunction and the applications for amendment and to implead one Vijaya, as a necessary party have been filed only a year later. Considering the fact that the petitioner/plaintiff has knowledge about the sale in favour of the defendants even in the earlier suit in O.S.No.482 of 2008 and the plaintiff has allowed to dismiss the said suit for default, I do not find any infirmity in the order passed in I.A.Nos.795 & 796 of 2010 in O.S.No.365 of 2009 on the file of the Principal District Munsif, Padmanabhapuram, dated 05.07.2011.

10.In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Principal District Munsif,
Padmanabhapuram.

+1 CC to M/s.N.S. RAMAKRISHNA DASS, Advocate (SR-90914[F] dated 03/10/2019)

+1 CC to M/s.V.M.BALAMOZHANTHAMBIL, Advocate (SR-91416[F] dated 04/10/2019)

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JMN(06.11.2019) 3P : 4C