



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.07.2019
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.2787 of 2018 (PD)
and
C.M.P. (MD) .No.12145 of 2018

1.A.Senthilkumar

2.Shree Vijayalakshmi Charitable Trust,
represented by its Managing Trustee
A.Senthilkumar ... Petitioners/
1st and 2nd respondents/
Plaintiffs

Vs.

1.K.M.S.Rafeeq ... 1st respondent/
Petitioner /3rd party

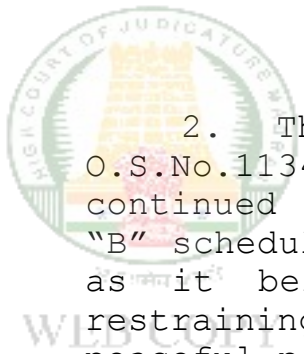
2.The Assistant Director (Industrial
Cooperative Society),
Liquidation Officer,
No.14, Reynolds Road,
Cantonment,
Trichy. ... 2nd respondent /
3rd respondent / 1st defendant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.04.2018, passed in I.A.No.116 of 2018 in O.S.No.1134/2017 by the II-Additional Subordinate Court, Trichy.

For petitioner	: Mr.C.Vakeeswaran
For 1 st respondent	: Mr.S.Vedachalam
For 2 nd respondent	: Mr.J.Gunaseelan Muthaiah, Addl. Government Pleader

ORDER

This petition has been filed by the petitioners / plaintiffs challenging the order, dated 25.04.2018, passed in I.A.No.116 of 2018 in O.S.No.1134 of 2017, whereby and whereunder the Court below has allowed the petition filed by the first respondent herein / 3rd party seeking to implead him as 2nd defendant in the



2. The petitioners/plaintiffs have filed the suit in O.S.No.1134 of 2017 for declaration that the plaintiffs have continued to enjoy the perfected right of easmentary of usage of "B" schedule property as pathway to the suit 'A' schedule property as it being so used by them and for permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the 'A' and 'B' schedule suit properties. During the pendency of the suit, the first respondent / 3rd party has filed I.A.No.116 of 2018 seeking to implead him as 2nd defendant in the suit stating that he already filed a suit in O.S.No.263 of 2017 for declaration and injunction against the petitioners/plaintiffs in respect of the very same property mentioned in the suit in O.S.No.1134 of 2017. The Court below, after hearing both sides, has allowed the said interlocutory application, thereby impleaded the first respondent/3rd party as 2nd defendant in the suit. Challenging the said order, the petitioners/plaintiffs have come up with the present petition.

3. Heard the learned counsel appearing for the parties and perused the records carefully.

4. It is seen that the first respondent/3rd party has filed the suit in O.S.No.263 of 2017 for declaration that the document No.433/2007 dated 16.02.2007, which was styled as sale deed and executed by the 1st defendant therein in favour of the 1st petitioner herein /1st plaintiff in O.S.No.1134 of 2017, is a sham and nominal document and for permanent injunction restraining the first petitioner herein /first plaintiff in O.S.No.1134 of 2017 from interfering with their peaceful possession and enjoyment of the suit schedule properties or in the alternative, for the relief of accounting by directing the 1st defendant therein to render true and proper accounts in respect of the amount received under the Power of attorney deed dated 28.02.2006 and for permanent injunction restraining the defendants therein, including the first petitioner herein from interfering with their peaceful possession and enjoyment of 'B' schedule property.

5. The petitioners/plaintiffs have filed the suit in O.S.No.1134 of 2017 for declaration that the plaintiffs have continued to enjoy the perfected right of easmentary of usage of "B" schedule property as pathway to the suit 'A' schedule property and for permanent injunction restraining the defendant therein from interfering with the plaintiffs' peaceful possession and enjoyment of the 'A' and 'B' schedule suit properties.

6. Admittedly, the suit properties mentioned in both the suits are one and the same. According to the first respondent/3rd party, <https://hdservices.courts.gov.in/hdservices/> item of the property mentioned in the plaint in O.S.No.263 of 2017 is originally belonged to his father and his father executed a power of attorney to divide the property into



plots to the first defendant therein by name M.Abdul Rahman, but the power of attorney holder has illegally sold the entire property to the first petitioner/first plaintiff. Whereas, according to the first petitioner/first plaintiff, he has purchased the said property by way of registered sale deed for a valid sale consideration.

7. It is the further case of the first respondent/3rd party, the suit "B" schedule property mentioned in the plaint in O.S.No.263 of 2017 had been in possession and enjoyment of his father for a period more than 30 years and after his father, the LRs of his father, including the first respondent/3rd party, have been in possession and enjoyment of the same without any objection from any quarters. Whereas, the first petitioner/first plaintiff claimed the 'B' schedule property for his easmentary right. Considering the nature of the dispute between the parties and also considering the relief sought for in the suit in O.S.No.1134 of 2017 and in order to avoid multiplicity of proceedings, the Court below has ordered to implead the first respondent/3rd party as 2nd defendant in the suit. This Court does not find any reason to interfere with the said finding of the Court below.

8. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The II-Additional Subordinate Judge, Tiruchirapalli.

+1cc to Mr.C.VAKEESWARAN,Advocate, SR.No.73831

+1cc to Mr.S.VEDACHALAM,Advocate, SR.No.73792

gcbg
C.R.P(MD).No.2787 of 2018 (NPD)
05.07.2019

NA (30.07.2019) 3P : 4C