

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.3099 of 2013

and

MP.No.1 of 2013

K.Mohan

.... Petitioner

Versus

1.Rajavelu
2.Settiya Gounder
3.Chinnusamy
4.Madeswaran
5.Ramasamy
6.P.Ponnuswamy
7.P.Saraswathi
8.M/s.Ponni Sugar Mills (Erode Ltd.,)
Rep.by its General Manager,
Pallipalayam, Kaveri R.S.,
Erode – 638 007.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.01.2013 made in I.A.No.280 of 2012 in O.S.No.237 of 2008 on the file of the Subordinate Judge at Tiruchengode.

For petitioner : Mr.V.Ayyadurai
For Respondents : Mr.B.S.Manikandan (for R1)
: R2 – Died
: No Appearance - R3 to R8

ORDER

The petitioner, who is a third party to the suit, has come forward with this

revision petition.

2.The first respondent herein is the plaintiff who filed the suit in O.S.No.237 of 2008 seeking partition of the property on the ground that the suit property is an ancestral property and hence, the plaintiff is entitled for ½ share ie., equal share in the property. The father of the plaintiff had filed a written statement alleging that there was an earlier partition and the same was acted upon, in view of the earlier partition already taken place in the family, there is no cause of action for the present suit seeking partition.

3.It remains to be stated that pending suit, I.A.No.33 of 2012 was filed by the plaintiff/first respondent herein against the Sugar Mill/7th defendant restraining them from making the payment of Sugar Price to the petitioner herein. Thereafter, the revision petitioner, third party filed the I.A.280 of 2012 under Order I and Rule 10 of CPC., to implead him as 8th defendant in the suit, on the ground that he had purchased the property from 5th and 6th defendants, who had purchased the property from the 1st defendant. In other words, the 1st defendant, father of the plaintiff had sold away the property to the 5th and 6th defendant, who in turn sold the property to the petitioner on 07.12.2011 by means of registered sale deed, which was marked as Ex.P1. The first respondent/plaintiff also marked Ex's.R1 and R2, which are complaints given to the Superintendent of Police, Namakkal and the acknowledgment card for having sent the complaint. The Trial Court

considering the above evidence dismissed the petition to implead the petitioner herein on the ground that the purchase of the suit property during the pendency of the suit is hit by *lis pendense*, hence, the Civil Revision Petition.

4.Heard the learned Senior Counsel for the petitioner and the counsel for the respondent.

5.The learned Senior Counsel would contend that on 23.07.2011 under Ex.R1, the plaintiff allegedly given a complaint to the Superintendent of Police stating that the petitioner, father of the plaintiff namely first defendant in the suit and their henchmen attempted to interfere with his possession and enjoyment of the property. Therefore, even on 25.07.2011, the petitioner has knowledge about the right of this petitioner in the property. However, the revision petitioner did not implead the petitioner as a party to the suit.

6.The petitioner said to have purchased the property from lawful owner without knowledge of the pendency of the suit and hence such purchase will not be a bar under Section 52 of Transfer of Property Act. Admittedly, the predecessor in title namely the 1st defendant has already filed a written statement alleging that there was already a partition taken between the parties and hence, the present suit

itself is not maintainable and there is no cause of action for filing the present suit. In such circumstances, as a *pendente lite* purchaser, the petitioner is entitled to be impleaded himself as a party to the suit under Order 1 and Rule 10 of CPC., and the question of the bar of Section 52 of the Transfer of Property Act, can be gone into only in the suit.

7. In view of the above, the order dated 29.01.2013 passed in I.A. No. 280 of 2012 in O.S.No.237 of 2008 is set aside and the I.A.No.280 of 2012 is allowed and consequently, the Civil Revision Petition is allowed. The Trial Court is directed to implead the 8th defendant and the 8th defendant is directed to file the written statement, within a period of two weeks and to complete the trial, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

20.02.2020

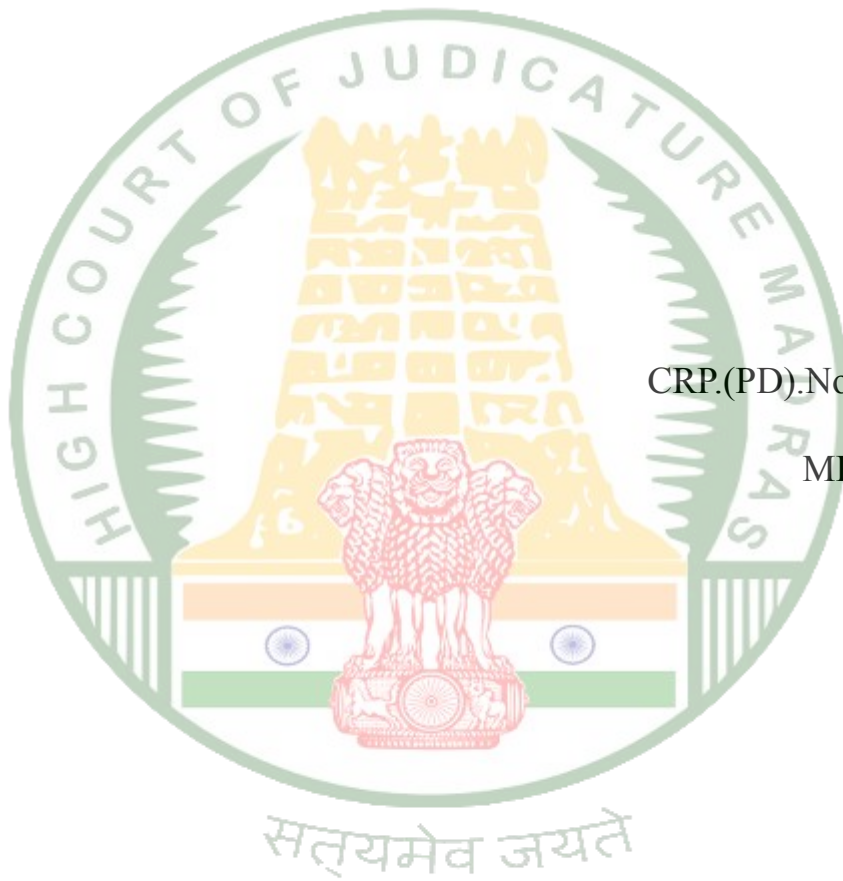
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Speaking/Non-Speaking order
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To
The Subordinate Judge, Tiruchengode.

Note: Issue order copy on 02.03.2020

RMT.TEEKAA RAMAN,J.,

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