

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3179 of 2013

and

M.P.No.1 of 2013

1.K.Purushothaman

2.P.Papraj

3.R.Kasirajan

.. Petitioners

Vs.

1.Ponnusamy

2.P.Rangasamy

3.R.Mohankumar

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and final orders dated 19.10.2012 passed in I.A.No.1059 of 2011 in O.S.No.304 of 2011 on the file of District Munsif Court cum Judicial Magistrate, Mettupalayam.

For Petitioners : Mr.J.Pothiraj

For R1 : Mrs.Vijayakumari Natarajan
for Mr.S.Natarajan

For RR 2 & 3 : No appearance

ORDER

The matter is heard through Video Conferencing.

This Civil Revision Petition is filed to set aside the fair and final order dated 19.10.2012 passed in I.A.No.1059 of 2011 in O.S.No.304 of 2011 on the file of District Munsif cum Judicial Magistrate's Court, Mettupalayam.

2. The petitioners are third parties in O.S.No.304 of 2011 and the first defendant is the plaintiff and the respondents 2 and 3 are defendants. The 1st respondent filed suit against the respondents 2 and 3 for permanent injunction restraining them from interfering with his peaceful possession and enjoyment of the suit property. The 1st respondent has contended that he is the absolute owner of the suit property and he is in possession and enjoyment of the suit property. On 26.06.2011, the respondents 2 and 3 along with rowdy elements, tried to interfere with his peaceful possession and enjoyment of the suit property. According to the 1st respondent, pending suit, he came to know that the respondents 2 and 3 appointed the 1st petitioner as their power agent, who sold the property to the petitioners 2 and 3. In view of the same, the 1st respondent filed I.A.No.1059 of 2011 under Order I Rule 10 read with

Section 151 of C.P.C. for impleading the petitioner as defendants 3 to 5 stating that they are proper and necessary parties to the suit.

2(a). The 3rd petitioner filed counter and petitioners 1 and 2 adopted the counter filed by the 3rd petitioner. The petitioners contended that the 1st respondent has filed the suit for bare injunction only against the respondents 1 and 2 for specific cause of action alleging that the respondents 2 and 3, on 26.06.2011 tried to trespass the 1st respondent's peaceful possession and enjoyment of the suit property. There is no cause of action against the petitioners and no party can be ordered without any cause of action against them and made averments on merits with regard to title of the property. The learned Judge allowed the petition and impleaded the petitioners as defendants 3 to 5.

3. Against the said order dated 19.10.2012 made in I.A.No.1059 of 2011 in O.S.No.304 of 2011, the petitioners have come out with the present Civil Revision Petition.

4. Mr.J.Pothiraj, learned counsel appearing for the petitioners reiterated the averments made in the counter affidavit and further submitted that 1st respondent has not alleged any threat dispossession by the petitioners. In view of the same, the order of the learned Judge impleading the petitioners as defendants in the injunction suit is without application of mind and prayed for setting aside the order dated 19.10.2012 passed in I.A.No.1059 of 2011 in O.S.No.304 of 2011 and for allowing the Civil Revision Petition.

5. Per contra, Mrs.Vijayakumari Natarajan, learned counsel appearing for the 1st respondent reiterated the averments in the affidavit and further submitted that the petitioners 2 and 3 appointed the 1st petitioner as their power agent and sold the property. In view of the same, in order of avoid multiplicity of proceedings, impleading the petitioners as defendants 3 to 5 is necessary. The learned Judge considering all the materials and documents filed by the 1st respondent, allowed the petition for impleading the petitioners as defendants 3 to 5 by giving valid reason and prayed for dismissal of the Civil Revision Petition.

6. Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

7. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

8. From the materials on record, it is seen that the 1st respondent has filed suit for permanent injunction against the respondents 2 and 3 alleging that they tried to interfere with the possession and enjoyment of 1st respondent on 26.06.2011. The 1st respondent filed the present I.A. for impleading the petitioners as defendants 3 to 5 on the ground that respondents 2 and 3 have appointed the 1st petitioner as their power agent who sold the property to the petitioners 2 and 3 and they are the subsequent purchasers and hence they are necessary parties. A reading of the affidavit filed in support of the above petition filed by the 1st respondent shows that there is no averments about interference by the petitioners. No cause of action

for permanent injunction against the petitioners had been made in the affidavit. The learned Judge without considering the above, allowed the petition on the ground that the 1st respondent may file a petition for amendment to include cause of action against the petitioners later. The said finding of the learned Judge is erroneous and the same is made on assumption and presumption. The learned Judge ought to have considered only the averments in the affidavit and counter affidavit and documents filed by the parties and decided the issue on merits. The order of the learned Judge is erroneous. For the above reason, the order of the learned Judge suffers from irregularity and illegality and the same is liable to be set aside and it is hereby set aside.

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

सत्यमेव जयते

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Index : Yes / No
Internet : Yes / No

To

The District Munsif Court cum Judicial Magistrate,
Mettupalayam.



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V.M.VELUMANI, J.

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