



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2020

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.M.P. (MD)No.4143 of 2020

in

C.R.P. (MD)No.SR28751 of 2020

and

C.R.P. (MD)No.SR28751 of 2020

WEB COPY

S.Pandian : Petitioner in both petitions

.. Vs ..

1.S.Vijaya

2.Rajan : Respondents in both petitions

PRAYER in C.M.P.(MD)No.4143 of 2020: Civil Miscellaneous Petition filed under Section 151 of CPC, to permit the petitioner to file a revision petition for striking off the plaint in O.S.No.50 of 2018 on the file of the Additional District Court (FTC), Theni.

PRAYER in C.R.P.(MD)No.SR28751 of 2020: Civil Revision Petition is filed under Article 227 of Constitution of India, to strike out the plaint in O.S.No.50 of 2018 on the file of the Additional District Court (FTC), Theni.

For Petitioner :Mr.R.Suriyanarayanan

COMMON ORDER

This Civil Miscellaneous Petition is filed to permit the petitioner to file the revision petition for striking out the plaint in O.S.No.50 of 2018 on the file of the Additional District Court (FTC), Theni.

2.The petitioner is a third party to the suit in O.S.No.50 of 2018. It is stated in the affidavit filed in support of the petition that the first respondent filed a suit for partition earlier in O.S.No.235 of 2014 on the file of the Subordinate Court, Theni relating to her mother's property on the basis that the cause of action for the said suit arose on 30.04.2009, ie., the date when her mother died. It is further stated that the house property of the mother of first respondent was not included in the first suit. It is also stated that the first respondent filed a second suit for partition in O.S.No.50 of 2018 on the file of the Additional District Court (FTC), Theni, without disclosing the earlier suit filed by her for partition in O.S.No.235 of 2014.

3.Stating that the petitioner purchased the house property from the brother of first respondent, namely, the second



respondent herein and that the petitioner is in possession of the property, the miscellaneous petition is filed seeking leave of this Court to prosecute the revision petition, which is meant for striking off plaint in O.S.No.50 of 2018.

4.As on date, no order is passed against the the petitioner in any of the suits filed by the first respondent. As a subsequent purchaser of the property, the petitioner is a necessary and proper party in the second suit, as he has purchased the property, which is the subject matter of the suit. Instead of filing a petition to implead himself in the suit in O.S.No.50 of 2018, the petitioner has approached this Court directly to strike off the plaint. Only in exceptional cases, a revision petition can be entertained under Article 227 of Constitution of India to strike off the plaint. When the petitioner has purchased the property during the pendency of the suit, he is having derivative interest and his right will be subject to the out come of the suit in O.S.No.50 of 2015.

5.In such circumstances, the petitioner cannot maintain a revision petition directly before this Court to strike off the plaint, as a purchaser *pendente lite*. Hence, this Court cannot entertain the revision petition. However, the petitioner's right to file a petition to implead himself as party in the suit in O.S.No.50 of 2018 and to pursue his remedy should be preserved.

6.Accordingly, this miscellaneous petition is dismissed with the liberty to the petitioner to file a petition to implead himself as party in the suit in O.S.No.50 of 2018 on the file of the Additional District Court (FTC), Theni, and to contest the suit or seek appropriate remedy. No costs. Consequently, the revision petition is rejected at SR stage itself.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr
To

1.The Additional District Judge(FTC), Theni.



2.The Subordinate Judge, Theni.

+1 CC to Mr.R. SURIYANARAYANAN, Advocate (SR-16279[F] dated 08/09/2020)

C.M.P. (MD) No.4143 of 2020
in
C.R.P. (MD) No.SR28751 of 2020
and
C.R.P. (MD) No.SR28751 of 2020
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