



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P (MD) No.770 of 2020

and

C.M.P. (MD) No.5142 of 2020

Vijayakumar

...Petitioner/Petitioner/defendant

Vs.

1.G.Muruganandam

2.R.Prabakaran

.. Respondents/Respondents/Plaintiffs

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.11.2019 passed in I.A.No.437 of 2019 in O.S.No.102 of 2012 on the file of the Additional Sub Court, Pudukkottai and to allow the Civil Revision Petition.

For Petitioner : Mr.G.Sridharan

For Respondents : Mr.P.Ganapathi Subramanian

O R D E R

The defendant in O.S.No.102 of 2012 on the file of the Additional Sub Court, Pudukkottai has approached this Court challenging an order dismissing his petition to receive his additional written statement Vide I.A.No.437 of 2019, in which he has raised the counter claim. This petition came to be dismissed.

2. The learned counsel for the revision petitioner submitted that the respondents/plaintiffs have laid a suit for bare injunction on the basis of the sale deed dated 11.07.2008 executed by certain Sangili Muthu and three others. This is resisted by the defendant on the ground that the same set of vendors have executed earlier a sale deed dated 24.07.1985 in his favour. The learned counsel further submitted that to prove the genuineness of his sale deed the defendant wanted to examine the attesting witnesses of his sale deed, but the Court did not permit him on the ground that the revision petitioner had not made any counter claim. Hence, the defendant was constrained to file an additional written statement raising counter claim in I.A.No.437 of 2019, which unfortunately has been dismissed on the ground that it is belated.

3. Heard the learned counsel for the respondents.



4. The suit is a simple suit for prohibitory injunction and both sides claim title to the same on the basis of two different sale deeds executed by the same set of vendors. In a suit for bare injunction, the Court is required to consider who is in lawful possession and for ascertaining the same, it may have to independently go into the question, of the two sale deeds, which one is validly executed. For this, the defendant need not seek for any counter claim, since even in a suit for bare injunction the Court can incidentally go into the question of title. Alternatively, even if title has to be decided, then, the burden is only on the plaintiff to go for declaration of title and the defendant cannot be driven to file a counter claim. In these circumstances, the Court considers that absolutely there is no need for filing counter claim and the trial Court appeared to have drifted away from its course.

5. Since this Court finds that there is no need to make any counter claim, the trial Court is now required to proceed with the trial and the revision petitioner / defendant is free to examine such witnesses as are necessary to establish their vendor's title to be in possession of the property in the manner he has strategized.

6. In conclusion, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional Sub Court, Pudukkottai

2.The Section Officer,V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC to Mr.G.SRIDHARAN, Advocate SR.No. 24338

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