



WEB COPY

C.R.P(PD)(MD) No. 2641 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 06.10.2020
CORAM

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

C.R.P (PD) (MD) No.2641 of 2015
and
M.P(MD) No.1 of 2015

Namasivayam : Petitioner/2nd defendant

Vs.

1.Jayam : 1st Respondent/Plaintiff

2.Chellan : 2nd Respondent/1st Defendant

PRAYER: This petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.167 of 2015 pending on the file of the District Munsif, Pattukkottai.

For Petitioner : Mr.Viji
for Mr.S.Deenadhayalan

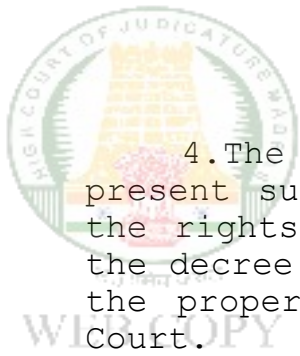
For R1 : Mr.D.R.Murugesan

O R D E R

This civil revision petition has been filed to strike off the plaint in O.S.No.167 of 2015 pending on the file of the learned District Munsif, Pattukkottai.

2. The suit is laid for declaration of title and for setting aside a decree passed in O.S.No.128 of 2011.

3.It is now time to introduce O.S.No.128 of 2011. This suit was laid by the revision petitioner herein against one Chellan for specific performance of a contract of sale agreement. The suit was decreed on 10.01.2012 and Execution Petition was laid in E.P.No.43 of 2012 for executing the decree he had obtained. On 24.07.2012, the Court executed the sale deed in favour of the revision petitioner on behalf of the first defendant Chellan. It is in this circumstance, the first respondent herein has laid O.S.No.167 of 2015 for the prayers which are already indicated above.



4.The core contention of the revision petitioner is that the present suit has been laid by the first respondent only to defeat the rights of the revision petitioner which he had secured as per the decree passed in O.S.No.128 of 2011 and to deny him enjoyment of the property pursuant to the sale deed executed by the Execution Court.

5.The learned counsel for the revision petitioner spared no effort to convince this Court that the first respondent/plaintiff in O.S.No.167 of 2015 has colluded with the defendant in O.S.No.128 of 2011 and has designed the present litigation to deny his rights obtained under the decree.

6.Heard the learned counsel for the respondents.

7.The learned counsel submitted that pursuant to the sale deed executed by the Court the revision petitioner moved the Execution Court for delivery of the suit property, and that came to be dismissed due to the pendency of the present suit.

8.Whether the first respondent/plaintiff in the present suit and the defendant in O.S.No.128 of 2011(who is arrayed as the second defendant in the present suit) have colluded for the purposes which the revision petitioner has stated, is a question of fact. However, if the present plaintiff claims his right under the defendant in O.S.No.128 of 2011 and not any independent right, then, there is a possibility to hold that the present suit may be an abuse of judicial process.

9.This Court in fitness of things requires some degree of factual investigation and therefore, this Court directs the petitioner to move the trial court to seek appropriate remedies, if he so desirous. Having stated thus, since the suit itself is pending from 2015, it will be advisable for the revision petitioner herein to contemplate on participating in the trial and disposing of the matter since there is a question of fact that requires to be considered.

10. In conclusion, this Civil Revision Petition is dismissed subject to the observations above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The District Munsif,
Pattukkottai.

Copy to:

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

C.R.P (PD) (MD) No.2641 of 2015

and

M.P (MD) No. 1 of 2015

06.10.2020

msa/Cm

SDS (21.10.2020) 3P-4C