



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2019
DELIVERED ON : 06.02.2020

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.2197 of 2019
and
C.M.P.(MD)No.11475 of 2019

G.Thirupathi

.. Petitioner

Vs.

1.Paramakudi Vaniyar Uravin Muraiyalagalin Pothu Sabai,
Rep. By its President,
No.8/191, Kannagi Street,
Paramakudi Town,
Ramanathapuram District.

2.Paramakudi Vaniya Uravin Muraiyalagalin Pothu Sabai,
Rep. By its Secretary,
No.8/191, Kannagi Street,
Paramakudi Town,
Ramanathapuram District.

3.V.Sundaramoorthy

.. Respondents

Prayer: This Civil revision petition is filed under Section 115 of Civil Procedure Code, to call for the entire records pertaining to the fair and decreetal order passed by the learned District Munsif, Paramakudi, Ramanathapuram District in E.A.No.38 of 2014 in E.P.No.2 of 2014 in O.S.No.158 of 1997 dated 04.11.2019 and set aside the same and consequently direct the above said learned District Munsif to implead the petitioner as one of the respondent in E.P.No.2 of 2014 pending on his file.

For Petitioner : Mr.S.M.Anantha Murugan

For 1st Respondent : Mr.A.Arumugam for M/s.Ajmal Associates

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in E.A.No.38 of 2014 in E.P.No.2 of 2014 in O.S.No.158

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of 1997 dated 04.11.2019, on the file of the learned District Munsif, Paramakudi, Ramanathapuram District.

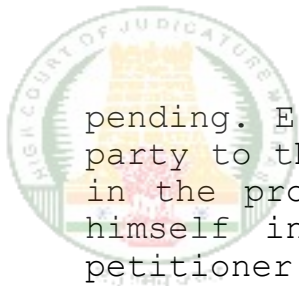
3.The petitioner is a third party to the suit, the respondents 1 and 2 are the plaintiffs and the third respondent herein is the defendant in the suit. The respondents 1 and 2 herein have filed a suit in O.S.No.158 of 1997 and the suit was decreed in favour of the plaintiffs on 08.11.2002. Against which, the defendant preferred an appeal in A.S.No.77 of 2004 and the same was dismissed on 22.06.2005. Against the dismissal of the first appeal, the defendant preferred a second appeal in S.A.(MD)No.744 of 2007 and the second appeal was dismissed on 05.04.2016. In the meanwhile, the plaintiff filed a petition in E.P.No.2 of 2004. During the pendency of E.P.No.2 of 2004, the petitioner herein who is the third party to the suit, filed an application in E.A.No.38 of 2014 to implead the petitioner as one of the respondents.

4.The brief substance of the application in E.A.No.38 of 2014 is as follows:

The suit property belongs to Paramakudi Vaniyar Uravinmurai Podhu Sabai. The third respondent got the petition property on 24.04.1992 on the basis of a rental agreement dated 01.02.1992. Since the third respondent failed to pay the rent properly, a suit was filed against him by the plaintiffs and the suit was decreed in their favour. The third respondent received sufficient amount from the petitioner and handed over the possession of the petition mentioned property to the petitioner. When the petitioner refused to pay more amount, the third respondent has filed a complaint in Crl.M.P.No.5005 of 2005 before the learned Judicial Magistrate, Paramakudi and the same was dismissed. The third respondent has filed an application in E.A.No.27 of 2004 in E.P.No.2 of 2004 and got an interim stay. He has filed a petition to implead the petitioner, as the possession was handed over to the petitioner. The petitioner is carrying on egg business and the then President Baskaran and Secretary Pichaimani of the said Sabai executed a rental agreement on 11.06.2010 in favour of the petitioner. The petitioner has paid a monthly rent of Rs.900/- (Rupees Nine Hundred only) without fail. On 05.05.2011, the District Registrar has cancelled the registration of Paramakudi Vaniyar Uravinmurai Pothu Sabai. On 09.07.2011, Raman and Saravanan issued a paper publication stating that they were the interim President and Secretary for the said Sabai and the rent shall be paid to them and both of them have disturbed the possession of the petitioner. The petitioner filed a suit in O.S.No.128 of 2012 and the same is pending. The petitioner is to be impleaded as a necessary party in the E.P. Proceedings.

5.The brief substance of the counter in E.A.No.38 of 2014 is as follows:

The third respondent has not paid the rent amount and a suit was filed and the same was decreed in favour of the plaintiffs. The



pending. E.P. was stayed by this Court. Since the petitioner is not party to the suit, he has no legal entity to be impleaded as a party in the proceedings. The petitioner has not taken steps to implead himself in the second appeal. The rent agreement stated by the petitioner is hit by the principles of *Lis Pendis*.

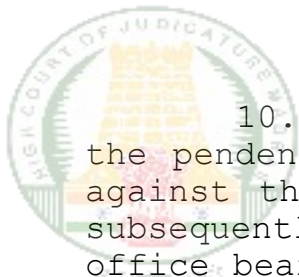
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6. After considering both side, the trial Court dismissed the application. Against which, the petitioner has come forward with the revision petition.

7. On the side of the revision petitioner, it is stated that the respondents 1 and 2 are trying to execute the decree and E.P. was pending for delivery. The new office bearers of the respondents 1 and 2 have executed a rental agreement and prays the revision petition to be allowed.

8. On the side of the respondents, it is stated that a third party who is claiming right over the property, is having the same interest in the property. Order I Rule 10 of CPC is applicable in the suit not in E.P. The petitioner can file either a claim petition or an obstruction petition. The petitioner obtained possession only during the pendency of the suit and the judgment is binding on the parties and also person, who claim right through a party to the suit. The decree is valid. The petitioner has not filed any suit claiming any right over the property. The petitioner has not filed any suit to declare the decree as null and void. The persons stated to have signed the agreement were not holding the post in the respondents 1 and 2 office at that time. Taking possession from the third respondent during the pendency of the case will not be binding upon the respondents 1 and 2. The possession was not handed over on the basis of the agreement. Hence, the agreement is invalid. The petition to implead in the second appeal was dismissed by this Court and the petitioner cannot reopen the same issue again at the stage of E.P.

9. On the side of the petitioner, it is stated that E.P. is a continuation of suit and an impleading petition is permissible. It is stated that the third respondent filed a private complaint against the petitioner and on the date of agreement, the signatories in the agreement were the office bearers in the respondents 1 and 2 office. The lease agreement was not denied by the respondents. The rent receipt was also filed. The registration of the respondents 1 and 2 was cancelled for non submission of statement of the accounts and there are two groups in the Sabai. Each group filed separate notification against the other group in daily newspaper. The respondents filed a written statement in O.S.No.128 of 2012. The suit is for depositing the rent in the Court. The transfer of possession is done during the pendency of the suit which was later rectified by the lease agreement and that agreement was not cancelled. There is collusion between the respondents.



10.It is seen that the petitioner obtained possession during the pendency of the suit from the third respondent. The suit ended against the third respondent. The claim of the petitioner is that subsequently the petitioner obtained a lease agreement from the then office bearers of the respondents 1 and 2. It is seen that there is some dispute in the administration of the respondents 1 and 2 and two groups are claiming administration over the respondents 1 and 2 office.

11.It is stated that there was some dispute between the third respondent and the petitioner and a criminal complaint was lodged against the petitioner herein. The petitioner was given possession by the third respondent during the pendency of the suit and later a lease agreement was stated to have been executed in favour of the petitioner. The validity of the lease agreement is also doubtful. Under Order I Rule 10(2) of CPC, the impleading petition is not applicable, after the disposal of the original suit. If at all the petitioner is having any separate right over the property, he has to approach the proper forum. But he cannot claim any relief though an impleading petition in an execution petition as the execution Court cannot go beyond the decree.

12.Hence, this petition is not maintainable and this Civil Revision Petition is dismissed and the order passed in E.A.No.38 of 2014 in E.P.No.2 of 2014 in O.S.No.158 of 1997 dated 04.11.2019, on the file of the learned District Munsif, Paramakudi, Ramanathapuram District is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The District Munsif, Paramakudi, Ramanathapuram District.

+1 CC to M/s.S.M.ANANTHA MURUGAN, Advocate (SR-5016[F] dated 06/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, (SR-5005[F] dated 06/02/2020)

C.R.P. (NPD) (MD)No.2197 of 2019

06.02.2020

JMN(18.02.2020) 4P : 4C

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