

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.435 of 2021 and
C.M.P.No.3772 of 2021

Arul

... Petitioner

Vs.

1. Marappan
2. The Sub Registrar,
Karimangalam,
Dharmapuri District
3. M.Annadurai
Former Sub Registrar,
Karimangalam,
Presently Sub Registrar
Office of District Registration,
Santhome High Road,
Chennai - 600 004
4. Vasanthan
5. Shanmugam
6. Praveenraj
7. S.Gandhi
8. Asvathnarayanan
9. P.Thambithurai (Assistant)
Sub Registrar in charge
Office of Sub Registrar,
Karimangalam Post and Taluk
Dharmapuri District

... Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India to direct the Munsif Court, Palacode to number the unnumbered I.A.No.---- of 2021 in I.A.No.610 of 2015 in O.S.No.110 of 2015 dated 11.01.2021

For Petitioner : Mr.V.R.Annagandhi

O R D E R

The present Civil Revision Petition has been filed under Article 227 Constitution of India to direct the Munsif Court, Palacode to number the unnumbered I.A.No.---- of 2021 in I.A.No.610 of 2015 in O.S.No.110 of 2015 dated 11.01.2021.

2. The petitioner / plaintiff had originally filed a suit in O.S.No.110 of 2015 as against his father, viz., Marappan, the 1st respondent herein and the Sub-Registrar, Kariamangalam Office/2nd respondent on the ground that his father, Marappan, has settled certain properties by a settlement deed dated 01.09.2014 in document no.1422 of 2014 and the suit property was delivered possession, thereby permitting the petitioner / plaintiff to mutate his name in all the statutory records. However, in the month of April, 2015, the petitioner / plaintiff came to know that 23 days later from 01.09.2014 when his father, Marappan had executed a settlement deed, he has also cancelled the settlement deed on 24.09.2014 itself without the knowledge of the petitioner / plaintiff. Aggrieved by the said act of his father / 1st respondent, the petitioner filed a suit for declaration declaring the cancellation of settlement deed dated 24.09.2014 in Document no.1616 of 2014 as null and void and to grant permanent injunction restraining the 1st defendant from alienating or encumbering the suit property. I.A.No.610 of 2015 in O.S.No.110 of 2015 was also filed by the petitioner / plaintiff seeking a temporary injunction restraining the 1st respondent further from alienating or encumbering the said suit property to any third parties.

3. It is seen that I.A.No.610 of 2015 in O.S.No.110 of 2015 came to be allowed by the learned District Munsif, Pallacode by order dated 26.02.2016, thereby restraining the 1st respondent from in any way encumbering the suit schedule property till disposal of the suit in O.S.No.110 of 2015. Pending suit, unnumbered I.A., was filed in I.A.No.610 of 2015 under Order 39 Rule 2(A) of CPC seeking for impleading respondents 3 to 9 in the I.A on the ground that despite there being an order of restraining the 1st respondent from creating encumbrance over the suit schedule property till the disposal of the suit and directed to maintain status quo, the 1st respondent had created an encumbrance in favour of the respondents 3 to 8 in document no.1004 of 2020 dated 27.06.2020 which was registered by the 9th respondent, Sub Registrar, Kariyamangalam. Hence the petitioner / plaintiff had taken out an application under Order 39 Rule 2 A to punish the respondents therein for violation of breach of injunction granted. The said application filed by the petitioner was returned by the District Munsif on the ground seeking explanation as to how respondents 2, 3 and 9 added as parties. As against the return dated 11.01.2021, the petitioner herein filed the present Civil Revision Petition seeking for a prayer to direct the District Munsif Court, Palacode to number the unnumbered I.A. In I.A.No.610 of 2015.

4. Heard the learned counsel appearing for the petitioner and perused the documents placed on record carefully.

5. On perusing the records available it is seen that the learned District Munsif Court, Palacode has returned the unnumbered I.A., filed under Order 39 Rule 2A on 09.12.2020 with the query as to how the respondents 2, 3 and 9 can be ordered as parties. The petitioner / plaintiff when representing the same on 21.12.2020 had explained the reason as to why and how the respondents 2, 3 and 9 were added as parties. However, the District Munsif, Palacode has returned the same on 22.12.2020 and on 11.01.2021 without assigning any reasons.

6. On going through the order dated 26.02.2016 passed in I.A.No.610 of 2015 in O.S.No.110 of 2015, it is seen that an injunction has been granted as against the 1st respondent, Marappan from encumbering or alienating the suit schedule property pending disposal of the suit. However, in the affidavit filed in support of the unnumbered application under Order 39 Rule 2(A), it is stated by the petitioner that the 1st respondent had created an encumbrance in Document No.1004 of 2020 dated 27.06.2020 in favour of the respondents 3 to 8 that was alleged to have been registered by the 9th respondent / Sub Registrar. Hence the petitioner / plaintiff has taken out an application to punish the respondents for disobedience of the breach of injunction granted.

7. It is not fair on the part of the District Munsif Court, Palacode to return the papers despite the sufficient reasons / explanations given by the petitioner / plaintiff for the return placed by the District Munsif Court, Palacode. It is for the defendants to take defence before the court and the court shall not step into the shoes of the defendants before even the defendants or the respondents, took such plea of non-joinder or mis-joinder as parties to the suit.

8. Under these circumstances, this Court is of the view that the unnumbered I.A., has to be numbered and orders to be passed after notice and affording opportunities to all the parties concerned and the same shall be the appropriate way to decide an application. The Learned District Munsif, Palacode is directed to number the unnumbered I.A ---Of 2020 in I.A.No.610 of 2015 in O.S.No.110 of 2015 and decide the said interim application on merits by affording sufficient opportunities to all the parties concerned. In view of the said facts, the Revision petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

ssd

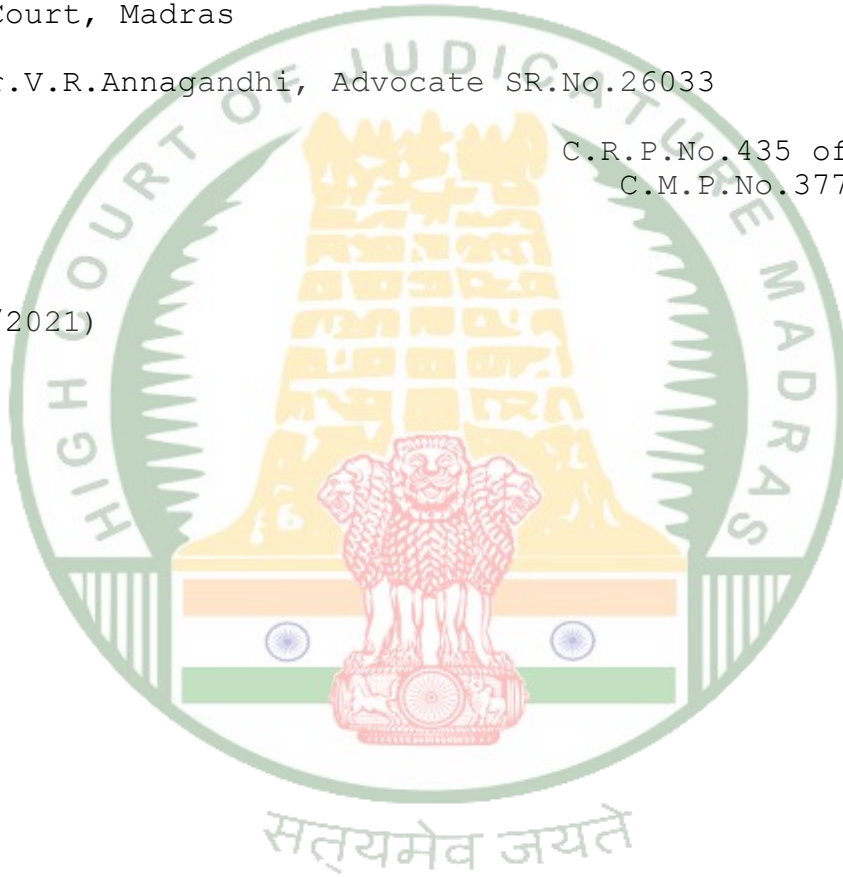
To

1. The Munsif Court,
Palacode
2. The Section Officer,
E.R.Section,
High Court, Madras

+1cc to Mr.V.R.Annagandhi, Advocate SR.No.26033

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GMY(09/07/2021)



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