

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3569 of 2017
and C.M.P.No.16830 of 2017

Moses Aided Middle School,
Azad Salai, Vijayapuram,
Tiruvarur Town,
Sundara Vilaga Vattam,
Rep. By its Agent Muruganandam.

.. Petitioner

Vs.

1.Kamala Krishty Grace

2.Mohammed Asina Begum

rep. By Power Agent Mohammed Gawoothur Alhaudeen,
Thalith Marakkayar Street, T.R.Pattinam,
Karaikkal Taluk, Puducherry.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 08.06.2017 made in I.A.No.234 of 2017 in I.A.No.283 of 2013 in O.S.No.49 of 2011 on the file of the District Munsif Court, Tiruvarur.

For Petitioner : Ms.Kantha
for M/s.S.Sounthar

For Respondents : No appearance

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the fair and final order dated 08.06.2017 made in I.A.No.234 of 2017 in I.A.No.283 of 2013 in O.S.No.49 of 2011, on the file of the District Munsif Court, Tiruvarur.

2.The petitioner is the plaintiff in O.S.No.49 of 2011. He filed the suit against the 1st respondent for permanent injunction, restraining her from interfering with the peaceful possession and enjoyment of the petitioner in the suit property. The 1st respondent filed written statement on 21.01.2013 and is contesting the suit. While so, the 2nd respondent filed I.A.No.283 of 2011, through power agent, stating that she has purchased the suit property from the 1st respondent for valid sale consideration and possession was handed over to the 2nd respondent.

When the agent of the 2nd respondent met the 1st respondent, he was informed that the petitioner filed suit for permanent injunction against the 1st respondent and the same is pending. The petitioner and 1st respondent are colluding together and are acting against the interest of the 2nd respondent. The 2nd respondent is owner of suit property and by impleading the 2nd respondent as 2nd defendant in the suit, no prejudice will be caused to the petitioner and the 1st respondent. Unless the 2nd respondent is impleaded as a party defendant, she will be put to irreparable loss and hardship.

3.The said application was adjourned for filing counter by the petitioner and 1st respondent. The counsel for the 1st respondent made endorsement as 'no counter'. The petitioner did not file counter in the said application. The learned Judge allowed the I.A., by the order dated 07.02.2017, impleading the 2nd respondent as 2nd defendant in the suit. The petitioner filed I.A.No.234 of 2017 under Order IX Rule 13 of C.P.C., to set aside the exparte order dated 07.02.2017, made in I.A.No.283 of 2013. According to the petitioner, in C.R.P.(PD).No.1349

of 2012, this Court by order dated 22.09.2017, granted stay of all further proceedings in O.S.No.49 of 2011. In view of the said order of stay, the petitioner was under the impression that no further proceedings will be taken up by the Trial Court in the suit. Only when the petitioner received notice from the Court directing him to appear before the Court on 23.02.2017, on verification he came to know about the exparte order impleading the 2nd respondent as 2nd defendant and filed the present I.A.No.234 of 2017 to set aside the said exparte order.

4.The 2nd respondent filed counter affidavit and stated that only after giving opportunity to the petitioner for filing counter, I.A.No.283 of 2013 was taken up for hearing. The petitioner failed to file counter and I.A. was ordered on 07.02.2017. The 2nd respondent is owner of the suit property. The petitioner ought to have filed counter affidavit, furnishing the details of C.R.P.(PD).No.1349 of 2012 and the said order would have enabled the 2nd respondent to approach this Court and get orders for speedy disposal of the suit and prayed for dismissal of I.A.No.234 of 2017.

5.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed I.A., holding that the application to set aside the order dated 07.02.2017 passed in I.A.No.283 of 2013 is unnecessary and reason given by the petitioner is not acceptable.

6.Against the said order of dismissal dated 08.06.2017, made in I.A.No.234 of 2017 in I.A.No.283 of 2013 in O.S.No.49 of 2011, the petitioner has come out with the present Civil Revision Petition.

7.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

8.Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

9.From the impugned order of the learned Judge dismissing I.A.No.234 of 2017, it is seen that the learned Judge is aware of the order

of this Court granting stay of all further proceedings in O.S.No.49 of 2011. In spite of such interim stay, the learned Judge proceeded to hear the I.A.No.283 of 2013 filed by the 2nd respondent for impleading him as defendant and passed order allowing the said I.A. Further, the petitioner has filed suit for permanent injunction, restraining the 1st respondent from interfering with petitioner's peaceful possession and enjoyment of the suit property. According to the petitioner, the 1st respondent is interfering with the petitioner's peaceful possession and enjoyment of the suit property. In view of the relief sought for in the suit and averments made in the plaint, the learned Judge ought to have considered whether the 2nd respondent is necessary and proper party to the suit. The learned Judge, without considering the above materials, allowed the I.A.No.283 of 2011, only on the ground that the petitioner did not file any counter affidavit and in the interest of justice. Further, the petitioner has stated that in view of the order of this Court granting stay of all further proceedings in O.S.No.49 of 2011 which is the present suit, he did not file counter. The learned Judge has not properly considered the said contention of the petitioner. The learned Judge has committed an error in

dismissing the application in I.A.No.234 of 2017, filed to set aside the order passed in I.A.No.283 of 2013, impleading the 2nd respondent as 2nd defendant in the suit. For the above reason, the impugned order of the learned Judge dated 08.06.2017, passed in I.A.No.234 of 2017 is set aside and the I.A.No.234 of 2017 is ordered. The learned District Munsif, Tiruvarur, is directed to take I.A.No.283 of 2013 filed by the 2nd respondent on file, give opportunity to the petitioner to file counter and after hearing all the parties concerned, pass orders on merits and in accordance with law.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

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Index :: Yes/No

gsa

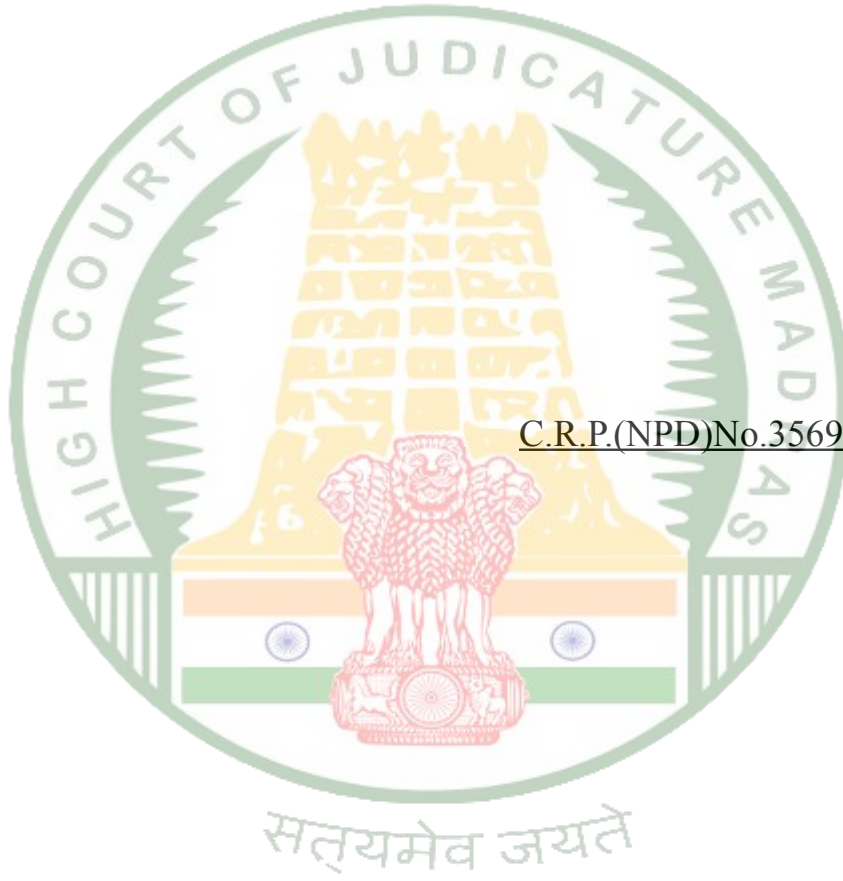
To

The District Munsif,
Tiruvarur.

C.R.P.(NPD).No.3569 of 2017

V.M.VELUMANI, J.

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