

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.90 of 2017

and

C.M.P.No.452 of 2017

Kumarasamy

.. Petitioner

Vs.

1.Kalaivani

2.K.Senthilkumar

3.K.Kamalam

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 21.09.2016 made in I.A.No.455 of 2015 in O.S.No.27 of 2014 on the file of the First Additional District Court, Erode.

For Petitioner : Mr.Sri.I.C.Vasudevan

For R1 : Mr.V.S.Kesavan

For RR 2 & 3 : 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 21.09.2016 made in I.A.No.455 of 2015 in O.S.No.27 of 2014 on the file of the First Additional District Court, Erode.

2.Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

3.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

4.The petitioner is third party in O.S.No.27 of 2014. The 1st respondent/plaintiff filed the said suit in O.S.No.27 of 2014 against the respondents 2 & 3 for declaration, injunction and in alternate for partition of 'B' schedule property into three portions and allot two portions to the 1st respondent.

5.The respondents 2 and 3/defendants filed separate written statements

and are contesting the suit. The petitioner, who is the husband of the 3rd respondent and father of the 2nd respondent filed I.A.No.455 of 2015 to implead him as 3rd defendant in the suit.

6. According to the petitioner, the property in question was purchased by husband of 1st respondent and petitioner in the name of the 1st respondent, petitioner and 3rd respondent. The petitioner paid the sale consideration for 2/3rd share and husband of 1st respondent paid sale consideration for 1/3rd share. The property was purchased in the name of the 1st respondent by her husband. Similarly, the petitioner purchased 2/3rd share in his name and in the name of his wife, 3rd respondent herein. According to petitioner, the 3rd respondent is not having any independent income and 2/3rd sale consideration for the property was paid by him from and out of his income. The 3rd respondent has no right, interest or title in 1/3rd share in the suit property. Due to misunderstanding, the 3rd respondent left the petitioner in the year 2007 and is residing separately from the year 2007. The petitioner settled his 1/3rd share to his son, the 2nd respondent herein and retained another 1/3rd share with him. While so, he came to know that the 1st respondent filed suit claiming that 3rd respondent sold 1/3rd share by sale deed dated 30.01.2012. The said sale deed is false. The 3rd respondent has no title or right to sell the

suit property. Hence, the petitioner is necessary party to the suit and prayed for impleading him as 3rd defendant in O.S.No.27 of 2014.

7.The 1st respondent and 3rd respondent filed separate counter affidavit and denied all the allegations made by the petitioner. According to 3rd respondent, she has purchased 1/3rd share from and out of her income and she has right to deal with the property. She mortgaged her share to the 1st respondent and subsequently she sold the suit property to 1st respondent. The petitioner settled his 1/3rd share on the 2nd respondent and he has no right in the suit property. Without having any right in the suit property, he is not a proper and necessary party and prayed for dismissal of I.A.

8.The learned Judge considering the averments in the pleadings and documents marked by the petitioner, dismissed the I.A., holding that petitioner is not a necessary party to the suit.

9.Against the said order of dismissal dated 21.09.2016 made in I.A.No.455 of 2015 in O.S.No.27 of 2014, the petitioner has come out with the present Civil Revision Petition.

10.From the materials available on record, it is seen that the suit

property was originally purchased by the sale deed dated 08.11.1995 in the names of Kalaivani, the 1st respondent herein, Kumarasamy, the petitioner herein and S.Kamalam, the 3rd respondent herein. The sale deed was marked as Ex.P1 in the I.A. The petitioner claimed that sale consideration of 2/3rd share was paid by him from and out of his income and he purchased 2/3rd share in his name and in the name of his wife, the 3rd respondent herein. According to the petitioner, the 3rd respondent has no independent income and she is binami of the petitioner. Due to misunderstanding between the petitioner and the 3rd respondent, the 3rd respondent left the petitioner in the year 2007 and is living separately. According to the petitioner, he has settled his 1/3rd share on his son, the 2nd respondent herein and retained 1/3rd share with him. Only to give trouble to the petitioner, the 3rd respondent without any right, title or interest, sold 1/3rd share of the suit property to the 1st respondent. In the sale deed dated 08.11.1995, which was marked as Ex.P1 in the I.A., it is seen that the property was purchased in the joint name of 1st respondent, petitioner and 3rd respondent. The petitioner has settled his share on his son, the 2nd respondent herein. Whether the 3rd respondent has purchased 1/3rd share out of her own income or petitioner only paid 2/3rd sale consideration are not relevant for deciding the issue in the present suit. The respondents 2 and 3 filed separate written statements and are contesting the

suit. It is for the petitioner to establish that he only paid 2/3rd sale consideration and 3rd respondent is only his binami in appropriate proceeding by letting in evidence. Without doing so, the petitioner is not entitled to file the present petition. The petitioner is neither necessary nor proper party, as he has no right or interest or title in the suit property. The learned Judge considering all the above materials, has exercised his power properly and dismissed the I.A. There is no error in the order of the learned Judge in dismissing the I.A.

11.In the result, this Civil Revision Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.08.2021

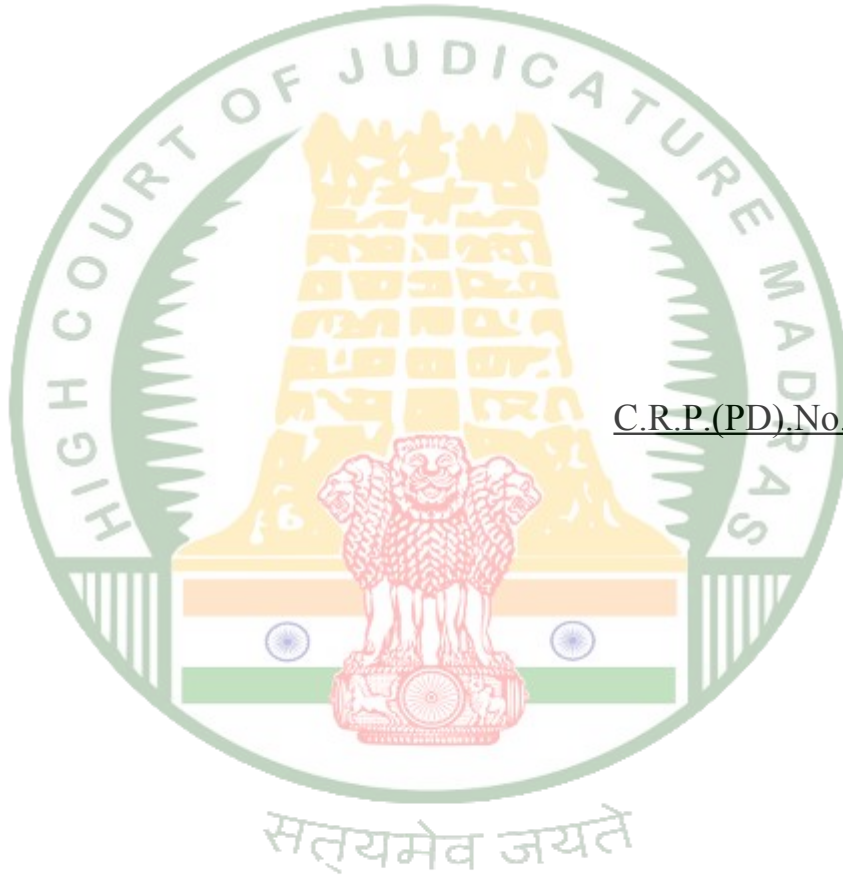
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Index : Yes / No
Internet : Yes / No

To

TheFirst Additional District Judge,
Erode.

V.M.VELUMANI, J.



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