

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.4245 of 2018
and C.M.P.No.23290 of 2018

Nagaraj

... Petitioner

Vs

1.Suseela
2.Govindasamy
3.Nataraj

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.10.2018 passed in I.A.No.561 of 2018 in O.S.No.259 of 2011 on the file of the District Munsif Court, Palladam.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.P.M.Duraiswamy for R1 and R2
R3 - Notice Served & No Appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 08.10.2018 passed in I.A.No.561 of 2018 in O.S.No.259 of 2011 on the file of the District Munsif Court, Palladam, thereby allowing the application filed by the respondents 1 and 2 herein to amend the plaint.

2. The petitioner herein is the second defendant and the respondents 1 and 2 herein are the plaintiffs and the 3rd respondent is the 1st defendant in the said suit. The respondents 1 and 2 herein filed the said suit for permanent injunction restraining the defendants from anyway laying an additional cart track in the suit schedule property. The suit was filed in the year 2011. In the year 2012, the petitioner herein filed his written statement and stated that the right of cart track was purchased by the petitioner herein by the registered sale deed dated 13.12.2010 from the second respondent herein. In fact, the petitioner herein also made counter claim to declare that he is entitled to the cart track described in the schedule and also for mandatory injunction directing respondents 1 and 2 herein to restore the cart track.

3. Along with the written statement, the petitioner herein annexed the sale deed which was executed by the first respondent herein in favour of the third respondent herein dated 14.06.2001 and also xerox copy of the sale deed dated 13.12.2010 executed by the third respondent herein in favour of the petitioner herein.

4. Pending trial, respondents 1 and 2 herein filed an application for amendment to include the prayer of declaration declaring that the sale deed dated 13.12.2010 is non est in the eye of law and it will, in no way, bind the respondents 1 and 2 herein.

5. The learned counsel for the petitioner herein would submit that the prayer of declaration itself is barred by limitation, since the petitioner herein categorically averred in his written statement dated 06.09.2012 itself that the suit cart track was purchased by the sale deed dated 13.12.2010. In fact, the petitioner herein also made a counter claim to declare the cart track purchased pursuant to the sale deed dated 13.12.2010 in favour of the petitioner herein. Therefore, the Court below ought not to have allowed the application and that too, after examination of P.W.1.

6. A perusal of the plaint filed by the respondents 1 and 2 herein would reveal that the main contention of the respondents 1 and 2 herein is that the petitioner herein, who purchased 3/4th share land in S.F.No.463/1 from the first defendant without any right of way, colluded with the first defendant cunningly planned to create a right of way over the Item Nos.I and II of the suit property with the aid of first defendant who has no right of title or interest to impose onus or burden over the Item Nos.I and II of the schedule mentioned properties and that they created false unsustainable documents creating untenable rights in favour of the petitioner herein. They also averred about the documents dated 14.06.2001 and 13.12.2010.

7. In fact, the cause of action for filing the suit itself is that the petitioner herein colluded with the third respondent herein to lay the additional cart track and created a document dated 13.12.2010. The suit cart track alone was conveyed by the sale deed dated 14.06.2001 in favour of the third respondent herein. There is a specific clause that the third respondent should not convey the same of the third parties and if the third respondent herein sales the same it would not bind respondents 1 and 2 herein.

8. Even then, the first defendant executed a pathway agreement dated 13.12.2010 in favour of the petitioner herein. Therefore it is not a sale deed and even then the third respondent herein has no right to convey the suit cart track in favour of the petitioner herein. Therefore, the Court below rightly allowed the amendment application and this Court finds no infirmity or illegality in the order passed by the Court below.

9. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is dismissed. No order as to costs.

16.07.2021

Internet: Yes

Index: Yes/No

Speaking/Non speaking order
rna

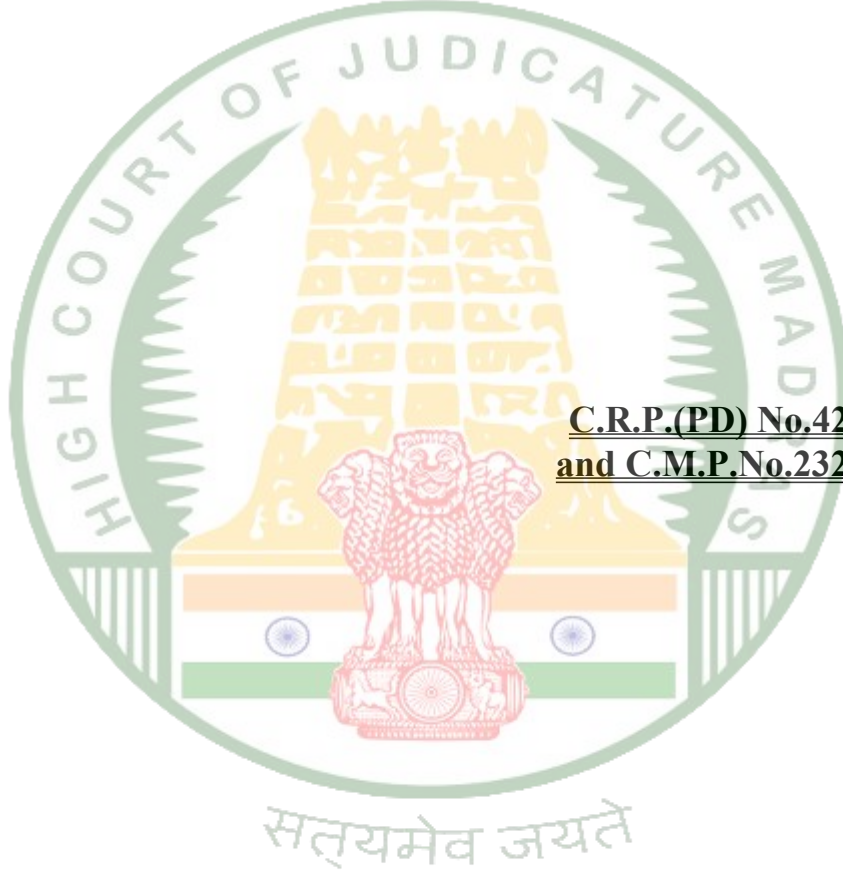
To

The District Munsif Court,
Palladam.

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G.K.ILANTHIRAIYAN. J,

rna



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