



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.07.2021

Pronounced on : 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD).No.1042 of 2021

WEB COPY

R. Annalakshmi

: Petitioner / third party

Vs.

1.S. Rajeswari

2.R.Dhanalakshmi

3.S.Ubaneshwari

4.Nalaayini

: Respondents 1 to 4 / Plaintiffs

5.P. Chithirai Thangam

6.P.Sivanesan

7.P. Vishvanathan

8.P. Nalarajan

: Respondents 5 to 8 / Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the petition and orders dated 12.07.2021 made in I.A.No.273 of 2021 in O.S.No.65 of 2013 on the file of the District Munsif Court, Tiruchendur.

For Petitioner

: Mr. S. Sivathilakar

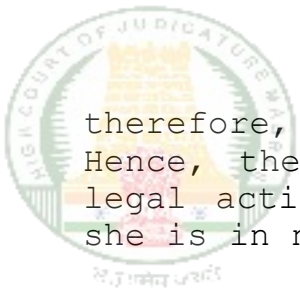
O R D E R

The Civil Revision is directed against the petition and orders dated 12.07.2021 made in I.A.No.273 of 2021 in O.S.No.65 of 2013 on the file of District Munsif Court, Tiruchendur.

2. Since the revision petitioner has challenged the issuance of notice in third party copy application, issuance of notice to the respondents is not necessary.

3. The revision petitioner is a third party. It is not in dispute that the respondents 1 to 4 / plaintiffs have filed a suit in O.S.No.65 of 2013 against the respondents 5 to 8 / defendants in respect of the property situated in S.No.26/3-B, Kalankudieruppu Village, Tiruchendur Taluk, Tuticorin District to an extent of 0.21.00 Hectares, that the preliminary decree was passed on 11.10.2013 and that thereafter, final decree was passed on 18.07.2016.

4. The case of the revision petitioner is that she is the absolute owner of the suit property and patta stands in her name, that the respondents 1 to 4 have filed the above collusive suit against the respondents 5 to 8 and managed to get preliminary and final decrees, that the plaintiffs have purposely omitted to implead the revision petitioner as a party in the above suit and that



therefore, decrees passed in the above suit are not binding on her. Hence, the revision petitioner is constrained to take necessary legal action against the respondents and for taking legal action, she is in need of records of the suit in O.S.No.65 of 2013.

5. It is evident from the records that the revision petitioner / third party has filed a copy application under Section 151 CPC seeking certified copies of the plaint, written statement, preliminary decree, final decree Judgment, Commissioner's report and plan, Execution Petition, Delivery warrant, Amin Return, that the said petition was taken on file in I.A.No.273 of 2021 and that the learned Munsif has passed an order for issuance of notice to both sides and adjourned the matter to 03.08.2021. Aggrieved by the said order, the third party applicant has come forward with the present revision.

6. Before entering into further discussion, it is necessary to refer Rule 128(5) of the Civil Rules of Practice:

"(5) In cases where it is doubtful whether the document of which a copy is applied for is one for which a copy can or ought to be granted and in all cases, where the applicant is not a party to the suit or proceeding, the application shall be placed before the Judge who shall decide whether it should be granted or refused. If the application is refused by the Judge, it shall be returned to the applicant with the order of the Judge endorsed thereon."

7. No doubt, the above Rule contemplates that the copy application of third party shall be placed before the concerned Judge and it is for him to decide whether the copies sought for should be granted or refused. As rightly contended by the learned counsel for the petitioner, the said Rule does not say that notice is to be issued to the parties to the lis and that they should be heard before deciding the copy application. No doubt, the Judge, before whom the third party copy application is placed, is having discretion either to grant the copies or to refuse to grant the same. In the case on hand, the revision petitioner has filed an affidavit in support of the copy application and whereunder she has specifically pleaded that the respondents 1 to 4 / plaintiffs in collusion with the respondents 5 to 8 / defendants have filed the suit and obtained preliminary and final decrees behind the back of the revision petitioner and since they have attempting to disturb the peaceful possession and enjoyment of the property in dispute, she is in need of copies of the records in O.S.No.65 of 2013 enabling her to initiate legal proceedings.

8. As already pointed out, the petitioner has alleged that the patta stands in her favour and she has also produced a copy of

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the patta along with the copy application. As rightly contended by the learned counsel for the revision petitioner, the learned District Munsif should have considered the affidavit filed in support of the petition and other documents produced and decide the application. But, on the other hand, he has passed an order for issuance of notice to both the plaintiffs and the defendants. This Court is of the clear view that the proceeding as to whether the copies of the records sought for by the third party are to be granted or not is a matter between the Court and the applicant and that the parties to the original suit have nothing to say and as such, their presence or participation is not at all necessary. Assuming for the sake of arguments, the parties to the suit, after receiving the Court notice, enter into appearance, they would only raise objections that the third party is not having any right or connection with the suit property and as such copies should not be granted, and in such a case, it cannot be said that the Court is duty bound to conduct enquiry and to pass orders.

9. Considering the above, the issuance of notice to the parties to the lis and hearing them would only consume time and it is nothing but wasting the judicial time of the Court. Hence, this Court has no other option, but to say that the impugned order of issuing notice to the parties is not warranted and as such, the same is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed and the impugned order of issuing notice to the parties, dated 12.07.2021 passed in I.A.No.273 of 2021 in O.S.No.65 of 2013 on the file of the District Munsif Court, Tiruchendur is set aside. The learned District Munsif is directed to pass necessary order for issuance of the certified copies, if it is otherwise in order. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The District Munsif Court, Tiruchendur.

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-25574[F] dated 06/08/2021)

order made in

C.R.P. (MD) .No.1042 of 2021

06.08.2021

SE (CO)

TR(09.08.2021) 3P 3C

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