



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.12.2020
DELIVERED ON	18.01.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No. 1172 of 2017 (NPD)
and CMP (MD) No. 5461 of 2017

P. Palanisamy ... Petitioner/Petitioner/
Petitioner/Plaintiff
vs.

1. N. Viswanathan ...Respondent/Respondent/
Respondent/Defendant
2. Angathal
3. Thilagavathi ... Respondents/Respondents/3rd party/
Proposed respondent Nos.2 & 3

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 30.09.2016 passed in E.A. No. 38 of 2015 in E.P. No.239 of 2013 in O.S. No. 165 of 2007 on the file of the learned Additional Subordinate Judge, Karur by allowing this Civil Revision Petition.

For Petitioner : Mr. P. Athimoola Pandian
For R-1 : No Appearance
For R-2 & R-3 : Mr. K. Suresh

O R D E R

The Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 30.09.2016 in E.A. No. 38 of 2015 in E.P. No.239 of 2013 in O.S. No. 165 of 2007 passed by the learned Additional Subordinate Judge, Karur.

2. The revision petitioner herein/plaintiff has filed a money suit in O.S. No. 165 of 2007 and the same was decreed on 04.12.2012 in favour of the revision petitioner. Based on the decree, dated 04.12.2012, the revision petitioner has filed a petition in E.P. No.239 of 2013 in O.S. No.165 of 2007. Thereafter, the revision petitioner herein has filed an application in E.A. No.38 of 2015 in E.P. No.239 of 2013 in O.S. No.165 of 2007 under Order 1 Rule 10(2) and Section 151 of the Code to implead the proposed respondents as



respondent Nos.2 & 3 in the Execution petition and the same was dismissed on 30.09.2016 against the revision petitioner herein/plaintiff. Aggrieved over the same, the revision petitioner is before this Court.

3. Heard the learned counsel appearing for the revision petitioner and the respondent Nos.2 & 3 and perused the material documents available on record.

4. The learned counsel appearing for the revision petitioner submitted that the Court below ought to have held that the proposed parties are the necessary parties in the Execution Petition, since the defendant has not discharged the decree debt. He further submitted that no prejudice would be caused to the proposed parties if they are impleaded in the Execution petition since they had voluntarily given the security question. He further submitted that the Court below has taken into consideration the non relevant factors to dismiss the application filed by the defendant. He further submitted that the reasons assigned by the Court below in support of its order are legally untenable and hence, liable to be set aside.

5. The learned counsel appearing for the respondent Nos.2 & 3 herein/Proposed respondent Nos.2 & 3 has submitted that the respondent Nos.2 & 3 are not Judgment debtors and they are not parties to the suit and hence, they cannot be impleaded in the execution petition. He further submitted that the petitioner will not be entitled to proceed against the respondent Nos.2 & 3 as against their properties, unless he proceeds against the 1st respondent and his properties. He further submitted that the respondent Nos.2 & 3 will not be liable to pay any amount and no decree has been passed against the respondent Nos.2 & 3 and therefore, the execution petition against the respondent Nos.2 & 3 cannot be maintained. Hence, the present application for impleading the respondent Nos.2 & 3 is not maintainable. He further submitted that no reason has been assigned in the affidavit as to why the respondent Nos.2 & 3 have to be impleaded, especially the petitioner filed execution petition against the properties owned by the first respondent. Hence, the Civil Revision Petition is liable to be dismissed.

6. The revision petitioner had filed the E.A. No.38 of 2015 to implead the respondent Nos.2 & 3 in the E.P. No.239 of 2013. The revision petitioner had contended that the suit was filed for recovery of money on pro-note and the said suit was decreed. Thereafter, E.P. No.239 of 2013 was filed for sale of property already given as security. Since the first respondent has contended that the petition is bad for non-joinder of necessary parties, the E.A. No.38 of 2015 has been filed.



7. The respondent Nos.2 & 3 contended that the proposed parties are not parties in the suit and therefore, they cannot be impleaded. The respondent Nos.2 & 3 had raised in his plea in counter that the E.P. No. 239 of 2013 was bad for non-joinder of necessary parties and the properties also not owned by him.

8. In attachment before Judgment petition in I.A. No.656 of 2007 the proposed parties gave security for the suit amount and also undertake to pay and also shown the properties as security and R-2 is none other than mother-in-law of Judgment debtor and R-3 is the wife of Judgment debtor. The Judgment debtor failed to pay the decree amount the Execution Petition was filed for sale of property. The 1st respondent also contended in counter that the Execution Petition is bad for non-joinder of necessary parties. The Respondent Nos.2 & 3 are owner of properties and they gave security bond also and therefore, they are necessary parties in the Execution petition, even though, they are not parties in the suit.

9. Finally, the Civil Revision Petition is allowed and set aside the fair and decreetal order, dated 30.09.2016 in E.A. No. 38 of 2015 in E.P. No.239 of 2013 in O.S. No. 165 of 2007 passed by the learned Additional Subordinate Judge, Karur. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Additional Subordinate Judge, Karur.

Copy to

The Section Officer, V.R.Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

Order made in

C.R.P. (MD)No. 1172 of 2017 (NPD)

18.01.2021

KM (29.01.2021) 3P 4C

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