



C.R.P.(PD) No.396 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD) No.396 of 2022

and

C.M.P. No.2072 of 2022

N.Gowri

... Petitioner

Vs.

1.R.Nagarajan
2.R.Palanisamy
3.R.Nagaraj
4.R.Rajendran
5.S.Mangayarkarasi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 01.10.2021 made in I.A. No.2 of 2020 in O.S. No.14 of 2017 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.N.Ponraj



ORDER

WEB COPY Challenging the dismissal of the application of her application to implead the respondents 2 to 5 as defendants 2 to 5 in the Suit, the defendant is before this Court.

2. The brief facts are as follows:

The first respondent/plaintiff had filed the Suit O.S. No.14 of 2017 on the file of the District Judge, Coimbatore for a declaration that the plaintiff is the sole and absolute owner of the suit property and for a direction to the defendant to deliver to the plaintiff the vacant possession of the suit property, removing the temporary structure put up thereon and for damages for use and occupation at the rate of Rs.5,000/- per month.

3. It is the case of the plaintiff that the property measuring an extent of one acre and 08 cents comprised in Survey No.295/2, 295/3 and 230/1 belonged to three brothers R.Palanisamy, R.Nagaraj and R.Rajendran, the sons of Ramasamy Thevar. The brothers had partitioned this extent under Partition Deed dated 01.07.1996, allotting specific extents to each of them and the properties allotted to each of the sharers were described as



WEB COPY

schedules A, B and C in the said document. In this partition, 0.36 acres in Survey No.295/2, 295/2 and 230/1 which was allotted to the share of R.Nagaraj is described as schedule-B to the partition deed. R.Nagaraj, under a sale deed dated 02.09.1996 had sold the said property to the plaintiff. It is the plaintiff's case that from on the date of the sale, he was put in possession of the suit schedule property. Since the plaintiff was working in Singapore the property was kept vacant and during his trips to Coimbatore, he would visit the property and on one such occasion in the month of December 2016, he was shocked to see the temporary shed in the said property which on enquiry, he came to know was put up by the defendant. The defendant when asked to remove the temporary structure started asserting a right over the suit property, stating that he has purchased the same under a sale deed dated 30.09.2013 from the power agent of the three brothers, one S.Mangaiarkarasi. The sale in favour of the defendant is non-est abinitio void, since the property has already been sold to the plaintiff herein on 02.09.1996. The power agent had also been appointed only after the sale in the favour of plaintiff, i.e., the power agent was appointed on 27.09.1996. The plaintiff would further submit that a fraud had been played by the said Mangaiarkarasi and the defendant herein.



WEB COPY

4. A written statement was filed by the defendant contending that they had purchased the property from the power agent of the three brothers, he had also raised a plea that the power agent and the original owners were necessary parties to the suit and therefore to be impleaded. Thereafter, she had come forward to file I.A. No.2 of 2020 to implead the proposed parties as defendants.

5. The 1st respondent / plaintiff resisted the said application contending that being the *dominus litis*, in the Suit, the plaintiff had already chosen the party against whom the Suit has to be instituted and reliefs claimed. Further, the impleadment of a party was not for the asking. The persons who are sought to be impleaded have already sold their interest in their said property and they have not interested whatsoever in the Suit Schedule property. No claim has been made against them and therefore they are neither proper nor necessary parties to the proceedings. If at all the revision petitioner / defendants wants to prove her case, she can always examine them as witnesses.



WEB COPY

6. The learned V Additional District Judge, Coimbatore by his order dated 01.10.2021 dismissed the said application and challenging the same, the revision petitioner is before this Court.

7. Heard, the learned counsel for the petitioner.

8. The only issue that now arises for consideration is whether the plaintiff has the right on the basis of his sale deed or the defendant has a right on the basis of her sale deed. This can be established by examining witnesses and the documents of title.

9. The plaintiff has traced the title to his property and there is no dispute to the said fact. In these circumstances, there is no necessity to implead the persons who were the erstwhile owners as no question with reference to the property or the sale deeds could be resolved by examining these vendors and the power agent.

10. The learned District Judge has rightly rejected the application, particularly when no relief is sought against the proposed parties.



C.R.P.(PD) No.396 of 2022

Impleading them would be an unnecessary hardship and harassment to the proposed party. Therefore, I do not see any merits in the Civil Revision Petition.

11. Accordingly, the Civil Revision Petition is dismissed. No costs.

Consequently the Civil Miscellaneous Petition is closed.

18.02.2022

Index : Yes/No
Speaking Order : Yes / No
ab/ssn

To

1. The V Additional District Court,
Coimbatore.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



WEB COPY



C.R.P.(PD) No.396 of 2022

P.T. ASHA, J.,

ab/ssn

**C.R.P.(PD) No.396 of 2022
and
C.M.P. No.2072 of 2022**

18.02.2022