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C.R.P. (PD) .No.679 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.679 of 2015

and

M.P.No.1 of 2015

Yuvaraj

.. Petitioner

Vs.

1.Mohanasundaram

2.Viswanathan

3.Savithri

4.Arjunan

5.Chenniamalai

6.Rangasamy

7.Arukkaniammal

8.P.Angamuthu

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order dated 19.09.2014 made in I.A.No.358 of 2014 in O.S.No.61 of 2014 on the file of the Sub Court, Perundurai.



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For Petitioner : Ms.Zeenath Begum
For RR 1 to 7 : No appearance

ORDER

(The matter is heard through “Video Conferencing”.)

This Civil Revision Petition is filed to set aside the fair and final order dated 19.09.2014 made in I.A.No.358 of 2014 in O.S.No.61 of 2014 on the file of the Sub Court, Perundurai.

2.The petitioner is plaintiff in O.S.No.61 of 2014 on the file of the Sub Court, Perundurai. He filed the said suit against the respondents to divide the suit properties by metes and bounds with reference to good and bad soil into six equal shares and to allot and deliver separate possession of one such share to him, to appoint a Commissioner to effect such allotment and to grant permanent injunction restraining the defendants from alienating or in any manner encumbering the suit properties to third parties till the final decree is passed. In the said suit, the petitioner filed I.A.No.225 of 2014 for interim injunction and interim injunction was granted. The petitioner also filed an application in I.A.No.358 of 2014 to implead one K.E.Selvakumar, S/o.K.S.Eswaramoorthy, D.No.37B, Kollathupalayam, Koothampalayam Village, Perundurai Taluk as 9th defendant in the suit in O.S.No.61 of 2014.



3. According to petitioner, he came to know that 8th respondent created a document as if he sold a portion of the suit property to said K.E.Selvakumar.

The 8th respondent and the said K.E.Selvakumar are fully aware of the petitioner's right over the suit property, created a document in respect of portion of the suit property in order to put the property beyond the reach of the petitioner. The said sale is invalid and will not bind the petitioner's right in the suit property.

4. Before the learned Judge, the respondents have not filed any counter affidavit.

5. The learned Judge considering the averments in the affidavit and relief sought for in the suit, by the order dated 19.09.2014 dismissed I.A.No.358 of 2014.

6. Against the said order of dismissal dated 19.09.2014 made in I.A.No.358 of 2014, the petitioner has come out with the present Civil Revision Petition.



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7.The learned counsel appearing for the petitioner contended that the order of the learned Judge suffers from material irregularities. The proposed party is proper party and only in his presence, the suit has to be conducted. Unless he is impleaded as party defendant, he will obstruct the execution of final decree. The learned Judge failed to issue notice to proposed party to ascertain his right to the suit property and prayed for allowing the Civil Revision Petition.

8.Though the respondents 1 to 3 & 7 entered appearance through counsel, today when the matter is taken up for hearing, there is no representation for them.

9.Though notice has been served on the respondents 4 to 6 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

10.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.



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11.From the materials available on record, it is seen that the petitioner is seeking to implead one K.E.Selvakumar, S/o.K.S.Eswaramoorthy as 9th defendant in the suit. The petitioner has not made the said K.E.Selvakumar as respondent in the application for impleading him as 9th defendant. The petitioner in the affidavit except stating that he came to know that 8th respondent created a document as if he sold portion of the suit property to said K.E.Selvakumar, has not furnished any details as to when the sale deed was executed by the 8th respondent in favour of the said K.E.Selvakumar. The learned Judge considering the failure on the part of the petitioner for not furnishing the details as to when the 8th respondent alleged to have sold the property to said K.E.Selvakumar, dismissed the application holding that in a suit for partition, the said K.E.Selvakumar is unnecessary party. There is no error in the order passed by the learned Judge. Further, in addition to that, the petitioner has not made the said K.E.Selvakumar as respondent in the application filed to implead him as 9th defendant. The contention of the learned counsel appearing for the petitioner that the learned Judge failed to order notice to the proposed party to ascertain the right to the suit property is without merits. Without impleading him, the petitioner cannot seek any relief



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against the proposed party. For this reason, the application is liable to be dismissed.

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12.In view of the above, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Internet : Yes / No

To

The learned Subordinate Judge,
Perundurai.



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V.M.VELUMANI, J.
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