



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).NO.1962 OF 2017

AND

CMP.NO.9500 OF 2017

K.Murugan

...Petitioner / Plaintiffr

Vs.

1.S.Dhandapani

...1st Respondent / Respondent

2.Dhananjeyan

...2nd Respondent / Proposed Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.1087 of 2015 in O.S.No.315 of 2015 on the file of the Additional District Munsif Court, Villupuram.

For Petitioner : Mr.K.S.Viswanathan

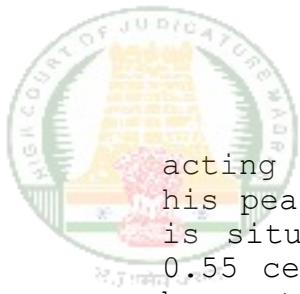
For Respondent : No Appearance

O R D E R

Heard the learned counsel for the petitioner. The 1st respondent / S.Dhandapani had been served with notice issued through Court on 13.12.2017. The 2nd respondent / Dhanajeyan had been served with notice issued through Court on 15.07.2017. Necessary endorsements to that extent are available in the Court records. The names of the respondents are also printed in the cause list. There is no appearance on behalf of the respondents.

2.Let that fact not be a deterrent in examining the Civil Revision Petition because pendency of the Civil Revision Petition has further stalled proceedings in O.S.No.315 of 2012. I am informed that there is no effective progress at all in the suit, which is now pending for the past 10 years before the Additional District Munsif Court, Villupuram.

3.The plaintiff in the aforementioned suit is the revision petitioner herein. The suit had been filed by the plaintiff / Murugan originally against one defendant, S.Dhandapani seeking permanent injunction restraining the said Dhandapani and anybody



acting under him or on his instructions from interfering with his peaceful possession of the suit property. The suit property is situated at Ayyur Agaram Village in Villupuram and measures 0.55 cents in Survey No.69 1.05. At any date even if it is to be mentioned that the survey number is wrong it might not affect the nature of the order to be passed.

4. Pending the suit, a third party, namely, Dhananjeyan obstructed possession of the plaintiff. Seeking protection of possession, even from such obstruction made by Dhananjeyan, the revision petitioner herein had filed I.A.No.1087 of 2015 to implead the said Dhananjeyan as a further defendant in the suit. The application was filed under Order 1 Rule 10 of C.P.C. It must be kept in mind that whenever such applications are filed it has to be first examined whether the party to be impleaded is necessary and proper to adjudicate the issues raised. Thereafter, it would also have to be examined whether nonjoinder of such necessary party would be fatal to the issue to be decided. Misjoinder may not be so.

5. It is the specific averment of the revision petitioner that the said Dhananjeyan, had disturbed the possession of the plaintiff on 01.11.2014. Therefore, it was claimed that it was necessary that he should be made as a party to the suit.

6. The proposed party filed a counter. In the said counter, it had been stated that he was a bonafide purchaser and had purchased the suit property from the defendant Dhandapani, for valuable consideration. A valuable right had accrued.

7. If such right had accrued then it is only appropriate that he exercises that right in manner known to law. It may not be proper on his part to interfere with the possession particularly, when a suit seeking protection of possession is pending before the Court. He could have very well impleaded himself as a party to the proceedings and sought a right to possess the suit property. He had not done so.

8. On the other hand, the plaintiff / revision petitioner had filed an application to implead him as 2nd defendant. If he claims that he is a purchaser of the property then, he becomes a necessary party and since he is a necessary party, he would also be a proper party in whose presence, the issues raised, particularly, with respect to possession and with respect to disturbance of possession can be determined. An issue of injunction against an owner may also arise. As a purchaser, he would also be a probable party, who would disturb the possession of the plaintiff. Therefore, viewed from any angle, non-joinder of the said defendant would be fatal to the case of the plaintiff herein.



9. Order 21 Rule 32 of C.P.C., also gives the procedure in which execution can be made of decrees of specific performance, of restitution of conjugal rights and also of injunction. As a purchaser, if he is not made a party to the suit, then, execution of the decree if at all it is obtained by the plaintiff, would only be a protracted proceedings. Therefore, even if viewed from that particular angle, it will only be appropriate that the said Dhananjeyam is made as a party / defendant to the suit.

10. I therefore, set aside the order of the learned District Munsif, Villupuram and allow I.A.No.1087 of 2015 and direct necessary amendment to be carried out imploding the Dhananjeyan as a party / defendant to the suit.

11. With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

kkn

To :

The Additional District Munsif,
Villupuram.

C.R.P(PD).No.1962 of 2017
and
CMP.No.9500 of 2017

SKM(CO)
RVM(22/03/2022)