



C.R.P.(PD) No.2950 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD) No.2950 of 2017

and C.M.P.No.13948 of 2017

Viswanathan

... Petitioner

Vs.

1.Ponnusamy

2.Syndicate Bank,
Zamin Elampalli Branch
Rep by its Branch Manager
Mr.Duraiaraj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 04.07.2017 passed in I.A.No.650 of 2016 in O.S.No.91 of 2012 on the file of the District Munsif, Paramathi.

For Petitioner : Mr.G.Pavendhan

For Respondents : M/s.S.Umamaheswari for R1
No appearance for R2



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ORDER

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This Civil Revision Petition has been filed to set aside the order dated 04.07.2017 passed in I.A.No.650 of 2016 in O.S.No.91 of 2012 by the learned District Munsif, Paramathi.

2. Originally, the suit in O.S.No.91 of 2012 was filed by the petitioner herein against the first respondent for partition and separate possession, besides permanent injunction and the same is pending. Thereafter, the second respondent/ Syndicate Bank had filed an application in I.A.No.650 of 2016 to implead them as 2nd defendant in the said suit, in order to protect the rights of the Bank because the said suit property in S.F.No.288/1 of Elampalli Nallagoundam Palayam Village was mortgaged with the 2nd respondent/Syndicate Bank under Memorandum of Deposit of Title Deeds dated 18.09.2006. The said IA was allowed by the Court below. Aggrieved by the same, the petitioner herein had filed the present petition.



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3. Learned counsel for the petitioner would submit that the application in I.A.No.650 of 2016 was filed by the bank, only at the instigation of the first respondent/defendant with a view to delay the suit proceedings. He would further submit that the second respondent herein should have taken steps to recover the alleged mortgage debt, instead of impleading them as a party in the above suit. Moreover, he would state that the Bank has not produced any documents relating to the alleged Mortgage Deed and therefore, there is no necessity to implead them as 2nd defendant in the suit. Hence, he prayed to set aside the order dated 04.07.2017 passed in I.A.No.650 of 2016.

4. The learned counsel appearing for the first respondent would submit that the petitioner herein had filed the suit in O.S.No. 91 of 2012 in bad faith to obtain the schedule property without acquiring title to the suit property. It is further contented that the 2nd respondent Bank has not produced evidence to prove the alleged mortgage deed and they have not taken any steps to recover the amount. Therefore, they may not be impleaded as a party defendant in the said suit.



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5. Heard the learned counsel for the petitioner and the learned counsel for the first respondent. Even after printing the name of the 2nd respondent/Bank in the cause list and the notice being served, he had either appeared in person or through his counsel.

6. This Court has perused the entire materials available on record.

7. Perusal of the records would go to show that the bank has not resorted to any proceedings with regard to the mortgage deed. Moreover, the 2nd respondent/third party bank had already secured himself with the original document of the suit property. Therefore, impleading the bank as a party defendant to the said suit, is not necessary. The learned Judge has also not given any acceptable reason for allowing the petition filed by the bank to implead themselves as a party defendant. In spite of sending notice to the respondent bank vide order of this Court dated 02.03.2022, they have not appeared before this Court either by themselves or through his counsel to substantiate their claim. Therefore, the order passed by the learned Judge



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is without any basis and the order dated 04.07.2017 in I.A.No.650 of 2016 in O.S.No.91 of 2012 passed by the learned District Munsif, Paramathi is set aside.

8. Considering the fact that the suit is of the year 2012, the Learned District Munsif, Paramathi is directed to dispose of the suit within a period of six(6) months from the date of receipt of a copy of this order.

9. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

07.07.2022

msv

To

1. The District Munsif,
Paramathi.
2. The Section Officer,
V.R.Section,
High Court of Madras.

J.NISHA BANU,J.

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