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C.R.P. No.3323 of 2017
and C.M.P. No.15496 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. No.3323 of 2017
and C.M.P. No.15496 of 2017

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Petitioner/
Plaintiff

versus

- 1.Pattappa Gounder (Given up)
- 2.Raju @ Kuppusamy (Given up)
- 3.Jaganathan (Given up)
- 4.Krishnasamy (Given up)
- 5.P.C.Gnanasekaran
- 6.S.S.Kandasamy (Given up)
- 7.S.Muthusamy (Given up)
- 8.S.Subramaniam
- 9.Velayammal (Given up)
- 10.V.Pappayee @ Pappayammal (Given up)
- 11.Samiathal (Given up)

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Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.163 of 2017 in O.S.No.14 of 2010 dated 02.08.2017 on the file of the II Additional Subordinate Court, Erode.



For Petitioner : Mr.A.K.Kumarasamy
Senior Counsel
for Mr.P.Muthukumarasamy

For Respondent No.5 : Mr.E.P.Senniyanigiri

For Respondent No.8 : No Appearance

For Respondent Nos.1 to 4, : Given up
6, 7, 9 to 11

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned II Additional Subordinate Judge, Erode, dated 02.08.2017 made in I.A.No.163 of 2017 in O.S.No.14 of 2010.

2. The revision petitioner is the plaintiff, who has filed the suit in O.S.No.14 of 2010 on the file of the Subordinate Court, Erode, for the relief of partition and other consequential reliefs against 11 defendants. The fifth defendant, namely, P.C.Gnanasekaran has filed the written statement stating that he purchased the property from the second defendant much earlier on 29.04.2004 in R.S.No.23/3 with specific boundaries and thereafter, he enjoyed the property as the absolute owner but he is not concerned with the



suit property as described in the plaint schedule more particularly in

R.S.No.23/2.

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3. After filing of the said written statement by the fifth defendant, the plaintiff has filed an application in I.A.No.163 of 2017 to exonerate the fifth defendant as he is not concerned with the suit property in R.S.No.23/2. The said application was contested by the fifth defendant by stating that already the plaintiff has filed a suit in O.S.No.22 of 2014 before the I Additional District Munsif Court, Erode, for permanent injunction with regard to R.S.No.23/2 and obtained an *ex parte* interim injunction and subsequently, the same was dismissed. Thereafter, the plaintiff has filed an appeal in C.M.A.No.8 of 2014 wherein the First Appellate Court has also dismissed the said appeal. So the plaintiff was well aware that the fifth defendant is not concerned with the suit property in R.S.No.23/2 but she has unnecessarily harassed him by filing the suit.

4. Considering the submissions made by the learned counsels on both sides, the learned trial Judge has observed that the right over



the property cannot be decided now and the fifth defendant has also not placed himself away from the relief and hence, the application is liable to dismissed and accordingly, it is dismissed. Challenging the pending proceedings, the plaintiff/petitioner has preferred this Revision.

5. The learned counsel for the petitioner submitted that in the written statement filed by the fifth respondent / fifth defendant, he has categorically stated that he purchased the property from the second defendant in R.S.No.23/3 and not concerned with the suit property in R.S.No.23/2. He further submitted that when the fifth defendant is not concerned with the suit property in R.S.No.23/2, the plaintiff is entitled to exonerate him from the proceedings but the trial Court has failed to appreciate this fact.

6. On perusal of records, it is seen that the fifth defendant has filed the written statement in the year 2013 itself and thereafter, the plaintiff has filed another suit in O.S.No.22 of 2014 against the fifth defendant with regard to R.S.No.23/2 and got an *ex parte* order and thereby disturbed the fifth defendant by harvesting the crops in R.S.No.23/3 which



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necessitated the fifth defendant to prefer a complaint before the police. Now she filed the application in I.A.No.163 of 2017 to exonerate the fifth respondent from the proceedings.

7. Having very well known that the fifth defendant is not concerned with the property in R.S.No.23/2, the plaintiff has filed the suit in O.S.No.22 of 2014 and also harassed the fifth defendant by obtaining the *ex parte* order. So the conduct of the plaintiff would clearly establish that she is abusing the process of law. However, the conduct of the fifth defendant would show that he is not concerned with the property in R.S.No.23/2 and the trial Court ought to have exonerated him from the proceedings, but he has been unnecessarily dragged on to the Court. On seeing the conduct of the plaintiff, this Court is inclined to impose costs on the petitioner / plaintiff. Accordingly, the petitioner / plaintiff is directed to pay Rs.5,000/- [Rupees Five Thousand Only] to the Legal Services Authority, Erode, within a period of two weeks from the date of receipt of a copy of this order.

8. With these observations, this Civil Revision Petition is ordered and the order dated 02.08.2017 passed by the learned II Additional



Subordinate Court, Erode in I.A.No.163 of 2017 in O.S.No.14 of 2010 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

17.11.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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To

The II Additional Subordinate Court, Erode.



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T.V.THAMILSELVI, J.

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