



CRP.Nos.1582 & 1583 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition Nos.1582 & 1583 of 2023
and
C.M.P. Nos. 10334 & 10335 of 2023

P.Balachander

... Petitioner in both CRPs

Versus

1.K.Mohan

Kanthammal (Died)
Subramani (Died)

2.Santhammal

3.Maliga

4.Vijaya

5.Babu

6.Ramesh

...Respondents in both CRPs

Prayer in CRP.No.1582 of 2023: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 16.02.2023 in E.A.No.116 of 2022 in E.P.No.27 of 2015 in O.S.No.538 of 1996 on the file of District Munsif Court, Arakkonam.



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Prayer in CRP.No.1583 of 2023: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 16.02.2023 in E.A.No.117 of 2022, in E.P.No.27 of 2015 in O.S.No.538 of 1996 on the file of District Munsif Court, Arakkonam.

For Petitioner in both CRPs : Mr.M.Sathishkumar

For Respondents in both CRPs:Mr.G.Jeremish

COMMON ORDER

The petitioners have filed these revision petitions to set aside the order dated 16.02.2023 in E.A.No.116 & 117 of 2022, respectively in E.P.No.27 of 2015 in O.S.No.538 of 1996 on the file of District Munsif Court, Arakkonam.

2. Heard, Mr.M.Sathishkumar, learned counsel for the petitioner and Mr.G.Jeremish, learned counsel for the respondents and perused the materials available on record.



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3. Before the trial Court the 1st respondent has filed a suit O.S.No.538 of 1996, for the relief of permanent injunction and other consequential reliefs. On hearing both sides the learned trial Judge decreed the suit as prayed for and directing the defendants to hand over of vacant possession of B Schedule property to the plaintiff, and granting two months time for removal of superstructure. Thereafter, the plaintiff filed an E.P.No.27 of 2015 in O.S.No.538 of 1996 before the District Munsif, Arakkonam, to execute the decree. Against which the Revision petitioner has filed an E.A.No.116 of 2022 in E.P.No.27 of 2015, under Section 151 of CPC to implead him as 8th respondent in the Execution Petition and in E.A.No.117 of 2022 in E.P.No.27 of 2015, under Order XXI Rule 29 CPC to stay the execution proceedings till the disposal of the suit in O.S.No.24 of 2022. Both the applications were contested by the 1st respondent / Decree holder / plaintiff stating that the revision petitioner has no locus standi to interfere in the execution proceedings. On hearing both sides the Executing Court dismissed both the applications were not maintainable. Challenging the said findings the Revision Petitioner has filed these Revision Petitions.



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4. The learned counsel for the Revision petitioner submitted that an extent of 1.41 acres comprised in Dry S.F.No.256/4a of the erstwhile Arakkonam Town and in the extent of land the Venkatrama Reddy was allotted undivided extent of 0.7 cents out of 41 cents in said Survey Number. Similarly Munirathina Reddy was also allotted an undivided extent of 0.7 cents in the Survey Number under the said partition deed. The petitioner stated that even during the life time of the Venkatarama Reddy, petitioner mother Banumathi and her issues namely Balachandar, Venkatraman, Narayanasamy and his mother Venkatasubbammal were living in a portion of the suit property by constructing a thatched house thereon in the extent mentioned in the schedule leaving the remaining extent as a vacant site. Thus the suit properties morefully described in the schedule after the demise of petitioner mother Banumathi and grandmother Venkata Subbammal, is in the exclusive possession of petitioner and his brothers, Narayanasamy and Venkatraman. A partition of the properties allotted to the petitioner grandfather Venkatrama Reddy had not taken place so far between petitioner family and the Munirathina Reddy who is the brother of the said Venkatarama Reddy. So, the revision petitioner has claiming undivided



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share of 0.7 cents in the suit Survey number and also contended that the suit property which is the subject matter of the partition deed, the partition was not physically taken place and the portion of the property was in the possession of the petitioner with a constructed residential house and the suit is pending with regard to the same schedule of property in O.S.No.214 of 2022 without considering the same the Court below had failed to appreciate the interim application for impleading the petitioner in the execution proceedings which is liable to be set aside.

5. By way of reply, the learned counsel for the 1st respondent / plaintiff submitted that he had purchased the suit property on 30.09.1946, from that onwards he has enjoying the properties. The defendants causing interference in his possession, so he filed a suit in the year 1996 and the same was contested by them. On hearing both sides the learned trial Judge decreed the suit on merits, in favour of the plaintiff. Thereafter, the plaintiff filed an Execution application to execute the decree. At this juncture, the 3rd party filed an application to implead himself and to claim share of 0.7 cents in the suit property. Admittedly, between Munirathina Reddy and



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VENKATRAMA REDDY, there was no undivided share. Besides the revision petitioner is unnecessary party to the proceedings. Hence the learned trial Judge rightly dismissed the applications, which needs no interference.

6. On a perusal of the records, it reveals that, based on the sale deed dated 30.09.1946, the plaintiff has filed a suit in O.S.No.538 of 1996 for permanent injunction, claiming title over the property. Now the revision petitioner / 3rd party praying to implead him as one of the party to the execution proceedings. However, there was a partition deed in the year 1957, but as per the sale deed stands in the name of the plaintiff, the revision petitioner purchased 0.7 cents with four boundaries. Till date the said sale deed is in force. If the revision petitioner is having any undivided share, he is to work out the remedy to file separate suit, not in the execution proceedings. Since, title of the revision petitioner cannot be decided in the execution proceedings. The learned trial Judge rightly concluded and given findings, which needs no interference by this Court.



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7. However, liberty is granted to the revision petitioner to work out the remedy separately, as on date the sale deed is in force.

8. Accordingly, these Civil Revision Petitions are dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

17.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To
1. The District Munsif, Arakkonam.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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