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C.R.P.Nos.2940 & 2941 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.Nos.2940 & 2941 of 2019

R.D.Murthy @ R.Dhakshinamoorthy

.... Petitioner / Petitioner /
Proposed Party
(in both CRPs)

Vs

1.D.Senthil
2.S.Venkatesan
3.Rasaiyan

.... Respondents/Respondents /
Plaintiffs, Defendants 1&2
(in both CRPs)

Prayer in CRP. No. 2940 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 09.07.2019 passed by the learned District Munsif, Tiruvarur in I.A.No.146 of 2019 in O.S.No.101 of 2018.

Prayer in CRP. No. 2941 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decretal order dated 09.07.2019 passed by the learned District Munsif, Tiruvarur in I.A.No.145 of 2019 in O.S.No.101 of 2018.



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For Petitioner : Ms.G.Deepika
for Mr.S.Giritharan

For Respondents : Mr.G.Palani for R1 [No appearance]
R2 & R3 - No appearance

COMMON ORDER

The revision petitioner is a third party to O.S.No.101/2018 on the file of District Munsif Court, Tiruvarur.

2. The suit was laid for a prohibitory injunction for restraining the defendants from disturbing the possession of the plaintiff. Along with the suit, the plaintiff has taken out an application for interim injunction vide I.A.No.452/2018. Alleging that he is in possession, the revision petitioner had moved the trial Court in I.A.No.146/2019 to implead himself in O.S.No.101/2018, and I.A.No.145/2019 to implead himself in the injunction application in I.A.No.452/2018. This was resisted by the plaintiff, and the trial Court dismissed both these applications, which orders are now challenged in these two revisions.



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3.1 Heard Ms.G.Deepika, learned counsel for the revision petitioner.

Introducing the facts, the learned counsel submitted that the suit properties and others originally belonged to a certain Sethurama Mudaliyar, that he had few children, of whom Muthukumarasamy is the one, with whom the revision petitioner had entered into an unregistered sale agreement on 11.02.2002, that the said sale agreement stipulates that the vendor under the agreement should execute a sale deed as and when partition takes place between Muthukumarasamy and his siblings. The sale agreement has also provided for eviction of two tenants (defendants 1 & 2) who occupied the property in question, by the revision petitioner. Acting on the same, the revision petitioner has also vacated the two tenants and has come into possession of the property. According to the revision petitioner, since the defendants 1 and 2 could not run his business in the suit properties, with the consent of Muthukumarasamy, it came to his possession even in 2002.

3.2. Arguing further, the learned counsel submitted that the partition is said to have been taken place between his vendor Muthukumarasamy and the latter's siblings even in 2005, and that the revision petitioner was not informed about the same. In the meantime, his vendor Muthukumarasamy also died. In this setting,



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some of the other parties to the partition deed who claim that the suit property was allotted to him in partition have laid O.S.No.101/2018, but mischievously against the erstwhile tenants of the suit property whom the revision petitioner had vacated. Inasmuch as the suit for bare injunction is all founded on physical possession of the property, it is imperative that the revision petitioner must be in the party array, lest it will lead to multiplicity of proceedings and possibly may lead to passing a collusive decree in favour of the plaintiff.

5. This Court finds that the submissions made by the learned counsel is not without merit. In her statement, the counsel for the revision petitioner asserts that the revision petitioner is in actual physical possession pursuant to the sale agreement dated 11.02.2002, and if it is proved to be true, then that will belie the case of the plaintiff that he was in physical possession of the property. But then, if at all the plaintiff has to defend his possession, it can be only under Section 53A of the Transfer of Property Act, then the statutory criterion or a pre-requisite for an agreement holder to defend his/her possession of the property agreed to be purchased, demonstrate his readiness and willingness to perform his part of the contract, but then that is a different issue. But for the present, this Court considers it appropriate that the suit is decided in the presence of the



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revision petitioner.

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6. Accordingly, both the civil revision petitions are allowed, and the revision petitioner is directed to be impleaded as a party defendant in the suit. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking orders

Note : Issue order copy on 23.03.2023

To:

1.The District Munsif
Tiruvarur.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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