



C.R.P.(MD).No.328 of 2023

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON: 13.02.2023**

**DELIVERED ON: 15.02.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.R.P.(MD).No.328 of 2023**

**and**

**CMP(MD).No.1603 of 2023**

M.P.Velraja

....Petitioner

Vs

1.K.Venkatesan

2.K.Selvam

3.K.Krishnamoorthy

4.K.Muthukumar

5.Vinayagamoorthis

6.S.Prakash

7.S.Vijay

....Respondents

**PRAYER:** Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the order in I.A.No.55 of 2018 in O.S.No.537 of 2013 on the file of the Principal District Munsif Court, Thirumangalam dated

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02.09.2022 and to pass the appropriate order in accordance with law.

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For Petitioner : Mr.B.Sukumar

### **ORDER**

The present revision has been filed by the first defendant in a suit for permanent injunction with regard to A, B, and C schedule properties.

2.Pending suit, the first defendant had filed I.A.No.55 of 2018 under Order 7 Rule 11 C.P.C to reject the plaint contending that the suit has not been properly valued as per the guideline value. The defendant had further contended that the Subordinate Court, Thirumangalam had executed a sale deed in his favour in which the value of the property is more and hence, the valuation of the property by the present plaintiffs is not correct. He had further stated that in view of the said sale deed, he has become the owner of the property and therefore, the present suit for bare injunction is not maintainable. The first defendant had further contended that he had filed E.P.No.13 of 2011 to execute the decree in O.S.No.963 of 2010 in which the plaintiffs have not got impleaded themselves as parties.



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3.As long as the decree in O.S.No.963 of 2010 is in force, the present suit is not maintainable. The defendant had further contended that when the Subordinate Judge has declared the title of the plaintiffs, the District Munsif Court would not have any power to arrive at contra finding with regard to the possession of the plaintiffs. Based upon the said ground, the first defendant had prayed for rejection of the plaint.

4.Per contra, the plaintiffs' side had contended that the plaintiffs not being the parties to O.S.No.963 of 2010, the said decree is not binding upon them. Therefore, the valuation of the property in the sale deed executed by the Court would not be a relevant factor for deciding the value of the property. The plaintiffs are not being the parties to O.S.No.963 of 2010, they cannot expect to implead themselves in the said execution proceedings. Hence, he prayed for dismissal of the said application.

5.The District Munsif after going through the records and hearing the submissions on either side, has arrived at a finding that the suit is for a bare injunction and the Court fee has been paid as per Section 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act. As far as the



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absence of prayer for declaration is concerned, the issue has to be decided only at the time of trial. Since the plaintiffs are not parties to O.S.No.963 of 2010 and the execution proceedings in E.P.No.13 of 2011, the question of directing them to implead themselves in those proceedings would not arise. The learned Judge further found that the present suit is only for permanent injunction and hence, the question of cancelling the decree passed by the Subordinate Judge in O.S.No.963 of 2010 does not arise. Based upon the said findings, the trial Judge dismissed the said application. Challenging the same, the present civil revision petition has been filed.

6.The learned counsel for the petitioner had reiterated all the grounds set out in the memorandum of grounds of revision petition. He had relied upon the pleadings in the plaint and the affidavit in I.A.No.55 of 2018 and contended that the order is not sustainable in law and the trial Judge ought to have allowed the application and rejected the plaint.

7.I have perused the plaint averments and the written statement filed by the revision petitioner herein.



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8. Admittedly, the present suit has been filed only for a bare injunction and the Court fee has been paid as per Section 27(c) of the Tamila Nadu Court Fees and Suit Valuation Act. Therefore, this Court is not in a position to accept the contention of the revision petitioner that valuation of the property is more and the suit has been undervalued. The present plaintiffs not being the parties to O.S.No.963 of 2010, the defendant cannot rely upon the sale deed executed in his favour in the said suit and compel the plaintiffs to seek a prayer for declaration of title. It is the option of the plaintiffs to get themselves impleaded in the execution proceedings arising out of O.S.No.963 of 2010. Mere non impleading in the said suit, would not result in rejection of the plaint. There is no prayer in the present suit for cancellation or to set aside the decree passed in O.S.No.963 of 2010 and hence, the question of jurisdiction of the District Musnif to set aside the decree passed by the Subordinate Judge in O.S.No. 963 of 2010 does not arise. The absence of plea for declaration of title could very well be raised by the defendant during the trial.

9. In view of the above said facts, I do not find any infirmity or illegality in the order passed by the trial Court. This Civil Revision



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Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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**15.02.2023**

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

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To

1. The Principal District Munsif,  
Thirumangalam
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR, J**

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Pre-delivery order made in  
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