



C.R.P(MD)No.1091 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.1091 of 2014
and
M.P.(MD)No.1 of 2014

R.Jegadeesan

... Petitioner

-VS-

1.Muthulakshmi
2.Vijaya
3.Vasantha
4.Kandasmy
5.Singaram
6.Murugan
7.Selvi
8.Ponraj

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.456 of 2011 in O.S.No.194 of 2008 on the file of the Sub Court, Palani dated 13.02.2014.

For Petitioner : Mr.M.P.Senthil

For R1 to R3 : Mr.P.Aathimoolapandian



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ORDER

The third defendant in a suit for partition is the revision petitioner.

2.The first defendant in the suit in O.S.No.194 of 2008 had borrowed loan from the third defendant, who has filed a suit in O.S.No.616 of 1990 for recovery of the said amount. In that suit, a decree came to be passed, by which the suit property was brought to Court auction on 12.06.2002. In the said auction, the third defendant was the successful purchaser. He had taken possession of the property on 17.07.2008 through Court.

3.The sisters of the first defendant had filed O.S.No.194 of 2008 for partition alleging that the first defendant is not the absolute owner of the property in issue and it is a joint family property. Pending suit, the plaintiffs had filed I.A.No.456 of 2011 to implead three third parties, on the ground that while the money suit was pending, the first defendant had inducted three tenants into the agricultural property through three registered lease agreements. The third defendant in the suit, who is the auction purchaser, had contested the said application on the ground that in a suit for partition, the cultivating tenants are not necessary parties. However, the trial Court



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found that those lessees have entered into the possession of the property through registered documents and they are the necessary parties to the suits and proceeded to allow the said impleading application. Challenging the same, the third defendant has filed the present revision petition.

4. According to the learned counsel for the revision petitioner, the cultivating tenants are not necessary parties in a suit for partition as they do not have any share in the suit property. Just because some documents have been created by the first defendant with the tenants, with regard to the suit property during the pendency of the money suit, they cannot be treated as necessary parties.

5. Per contra, the learned counsel for the plaintiffs contended that the proposed parties have entered into possession of the property through registered documents and prior to the auction sale is conducted and therefore, they are necessary parties.

6. I have carefully considered the submissions made on either side and perused the material records.



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7.It is the case of the revision petitioner/third defendant that he had purchased the suit schedule property in a Court auction on 12.06.2002 and he had taken possession through Court on 17.07.2008. Even though, the proposed parties are said to have been entered into possession of the suit property prior to taking of the possession through Court, they have not raised any objection with regard to the possession taken by a third party. Therefore, at this point of time, impleading of the proposed parties is not legally sustainable, especially in a suit for partition.

8.In view of the aforesaid facts, the order impugned in the revision petition is set aside and the revision petition stands allowed. The trial Court is directed to dispose of the suit on or before 31.03.2024. No costs. Consequently, connected miscellaneous petition is closed.

07.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Sub Court, Palani



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R.VIJAYAKUMAR,J.

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