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C.R.P(MD)No.2192 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.2192 of 2023
and
C.M.P(MD)No.11102 of 2023

M.Rama

... Petitioner/Petitioner/
Proposed 2nd Defendant

Vs.

1.S.Nagarajan

...1st Respondent/Respondent/
Plaintiff

2.V.Chinnapillai

...2nd Respondent/Respondent/
Defendant

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Ex-order and fair order dated 01.03.2023 made in I.A.No.5 of 2022 in O.S.No.79 of 2022 on the file of the Additional District Judge, Sivagangai and allow the above civil revision petition.

For Petitioner

:Mr.S.Manoharan

ORDER

This civil revision petition is filed against the Ex-order and fair order dated 01.03.2023 made in I.A.No.5 of 2022 in O.S.No.79 of 2022 by the Additional District Judge, Sivagangai.



2. According to the revision petitioner/defendant, the first respondent/plaintiff filed a suit in O.S.No.79 of 2022 before the Additional District Court, Sivagangai, for recovery of money against the second respondent/defendant in the said suit. During the pendency of the above suit, the revision petitioner took out an application in I.A.No.5 of 2022 to implead himself as necessary party in the suit. In the said suit, the revision petitioner has stated that he purchased the suit property from the second respondent/defendant on 18.11.2022 for valuable consideration. Since the attachment order was not entered in the encumbrance certificate, he was not aware of the proceedings between the plaintiff and the defendant in the above suit. At a later point of time, the petitioner came to know that the suit property was attached on 01.12.2022, since the first respondent/plaintiff and the second respondent/defendant colluded with each other failed to implead the petitioner/second defendant as necessary party in the suit. Hence, he filed an application in I.A.No.5 of 2022 to implead himself as necessary party in the above suit. Otherwise, it would cause great hardship to him.

3. The same was resisted on the side of the first respondent/plaintiff by stating that as per in I.A.No.2 of 2022 the attachment order passed by the trial Court was entered in the encumbrance certificate and during the pendency of the suit, the second respondent/defendant has alienated the



property in favour of the petitioner, which is hit by Section 52 of the Transfer of Property Act. Hence, the petitioner is not a necessary party in the above proceedings. The trial Court, after considering the averments made in the petition and in the counter affidavit, has dismissed the application. Against which, the present civil revision petition is filed.

4.The learned counsel appearing for the petitioner would submit that at the time of purchasing the property by the petitioner, nothing was mentioned about the above attachment order in the register maintained by the Registrar Office. Only after perusing all the documents and getting the legal opinion, the revision petitioner has purchased the suit property in good faith. He had also paid all the debts due to ICICI Bank by the first respondent in connection with the suit property. He would further submit that the present suit has been filed by the respondents 1 and 2 in collusion to cheat the petitioner and also furnishing false residential address of the revision petitioner herein. If the petitioner is not impleaded as necessary party in the suit, he will put to irreparable loss and hardship. Hence, he prays for dismissal of the revision petition.

5.Heard the learned counsel appearing for the petitioner and perused the materials available on record.



6. Admittedly, it is a suit for recovery of money filed by the first respondent/plaintiff against the second respondent/defendant. It is also not in dispute that the suit was posted on 23.12.2022 for judgment. As per I.A.No.2 of 2022 attachment was ordered by the trial Court, in which, the suit property was attached. The attachment order was passed on 07.11.2022, however, the suit property was purchased by the petitioner/2nd defendant, only on 18.11.2022 after the attachment order was passed. Even it is assumed that the petitioner is a bonafide purchaser, his remedy is only to file a fresh suit or to raise his objection at the time of executing the decree. Moreover, it is only a suit for recovery of money, in which, there is no claim against the petitioner herein. Therefore, the petitioner is neither as a necessary party nor the proper party in the above suit. Therefore, there is no infirmity in the order passed by the trial Court and calls for no interference. Accordingly, this Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.08.2023

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



To

1.The Additional District Judge,
Sivagangai .

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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