



C.R.P(MD)No.2052 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.2052 of 2022

and

C.M.P(MD).No.9378 of 2022

M.Nethaji

... Petitioner

Vs.

1.D.Balasundaram

2.A.Kalaiselvi

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 22.12.2021 made in I.A.No.4 of 2020 in A.S.No.60 of 2019 on the file of the learned Additional Subordinate Court, Thanjavur, set aside the same and allow this civil revision petition.

For Petitioner

: Mr.S.Srinivasaraghavan

For Respondents

: Mr.K.Mohanasundram (for R1)

No representation (for R2)

ORDER

The civil revision petition is filed against the order dated 22.12.2021 made in I.A.No.4 of 2020 in A.S.No.60 of 2019 passed by the learned Additional Subordinate Judge, Thanjavur.



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2. The said interlocutory application was filed by the petitioner /third party seeking to implead himself as the second respondent in the appeal suit. O.S.No.238 of 2010 is filed by one Kalai Selvi claiming herself to be the owner of the property for a permanent injunction against one Balasundaram from in any manner interfering with the peaceful possession and enjoyment of the suit property. The said Balasundaram resisted the suit by filing a written statement. After considering the case of the parties, by a judgment and decree dated 02.07.2019, the suit was decreed granting permanent injunction restraining the said Balasundaram from in any manner interfering with the possession of the suit property. As against the same, the said Balasundaram has now filed A.S.No.60 of 2019 and pending the same, the present application is filed by the petitioner/ Netaji claiming that by a registered lease agreement dated 31.03.1998, the said Balasundaram had leased out the property to him and that he is in possession and enjoyment of the suit Schedule property. From verification of the lease deed, it reads as if the suit property is an agricultural punja land and it taken on lease for an annual rent of Rs.3000/- for a period of 30 years. The Lower Appellate Court considered the case of the parties and concluded that when the suit was going on from 2010 onwards, the third party/petitioner 's case that he did not even know about the suit, is unbelievable and non-suited him on that ground and held that at the appellate stage, he



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cannot be added as a party. Agreed by which, the present civil revision petition is filed.

3. Mr.S.Srinivasa Raghavan, the learned counsel appearing on behalf of the petitioner would submit that if the appeal suit is decided against the said Balasundaram, the possession will be taken and ultimately, when the property is in his possession, he will be affected and therefore, being an aggrieved party, he has filed the application for impleading and the Lower Appellate Court ought to have given him an opportunity and so that, in a suit for bare injunction, if the possession is not with either of the parties to the suit, he could have established the same before the Lower Appellate Court.

4. Per Contra, it is the case of the second respondent/ plaintiff that the suit property is a vacant land and already plotted out and sold to the third parties. Therefore, the possession goes along with the title. The plaintiff has established the title and it is false to contend that the petitioner /third party is in possession of the property. Further, when the suit was filed in the year 2010 and the injunction is now granted against Balasundaram in the year 2019 belatedly, at the appellate stage, the petitioner cannot implead himself.



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5. I have considered the rival submissions made on either side and perused the materials records of the case.

6. When this Court takes into consideration that as on date the suit property is described to be a vacant land as far as the plaint schedule property. The decree is one of injunction as against the said Balasundaram. Therefore, the petitioner cannot seek to implead himself as a party to the appeal suit. The plaintiff has proved his title and the possession of the property *viz-a-viz* the said Balasundaram is concerned, lease deed has also been produced by the petitioner's vendor as Ex.B.48. The trial Court considered the same and decree has been passed against the said Balasundaram. Therefore, the petitioner cannot now implead himself at the appellate stage. If the petitioner contends that still he is in possession i.e., his independent right and for his purpose, he need not to be impleaded in the present suit, which is between Kalai Selvi and Balasundaram alone. Therefore, leaving it open for the petitioner to avail such remedies, if he is so entitled to as per law, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

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NCC:Yes/No
Index:Yes/No
Rmk



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To

1.The Additional Subordinate Judge, Thanjavur.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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