



C.R.P(MD).No.2369 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.2369 of 2023
and
C.M.P(MD)No.12143 of 2023**

M.Alagar

... Petitioner / Petitioner /
Proposed Party

Vs

1.A.Madurai Veeran

... 1st Respondent / 1st Respondent
/ Plaintiff

2.A.Pandian @ Pandiyarajan

3.A.Vinoth @ Vinothkumar

... 2 and 3 Respondents /
Respondents 2 and 3 / Defendants 1 and 2

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.133 of 2022 in O.S.No.776/2016 dated 20.04.2022, on the file of the II Additional Sub Judge, Madurai.

For Petitioner : Mr.M.Thirunavukkarasu

For R1 : Mr.V.Nagendran



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For R2 and R3 : Mr.D.Deepak Arasu

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order made in I.A.No.133 of 2022 in O.S.No.776/2016 dated 20.04.2022, on the file of the II Additional Sub Judge, Madurai.

2. The suit in O.S.No.776 of 2016 is filed by the first respondent herein namely Maduraiveeran against one Pandiyan and Vinoth who are the respondents herein 2 and 3 seeking the relief of declaration that he is the absolute owner of the suit property, for removal of the encroachment made by the defendants in the A schedule property, recovery of possession and permanent injunction etc. Pending the suit, the revision petitioner preferred an I.A.No.133 of 2022 to implead himself as a party. That came to be dismissed by the trial Court against which this revision petition is preferred.

3. The facts in brief is that originally, a suit in O.S.No.779 of 2002 was filed by one Arumuga Gounder, the plaintiffs in the present suit namely Madurai veeran and one Kutti Raja against one Mani Gounder.



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The Mani Gounder is the father of the revision petitioner herein. That suit was filed by Maduraiveeran, Arumuga Goundar and Kutti Raja, seeking the relief of permanent injunction. Now the revision petitioners state in the affidavit that in a fraudulent manner, the respondents herein obtained patta in respect of the A schedule property. Having failed to get a favourable judgment in O.S.No.779 of 2002, by suppressing the fact that the revision petitioner is the proper party, they filed the present suit in a fraudulent manner. Defendants 1 and 2 in the suit are strangers. When the commissioner was appointed in the suit, the commissioner attempted to measure the property without giving notice to them. When protest was made, the commissioner returned without completing the work. So they are the necessary parties for the litigation.

4. That was resisted by the respondent stating that to grab the property only they filed the application. Therefore the presence of the petitioner herein is not required for deciding the issue. The application was dismissed by the trial Court stating that no proper documents is filed by the revision petitioner to show that they are all *prima facie* interested in the subject matter. Against which this Civil Revision Petition is



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preferred.

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5. As stated above, in the pleadings itself it has been specifically stated by the revision petitioner that the subject matter of this present suit is also the subject matter of the suit in O.S.No.779 of 2002 which was filed by one of the plaintiffs against his father. Even against the judgment and decree an appeal was filed in A.S.No.61 of 2005. After the failure before the trial Court as well as the appellate Court, the present suit is filed by getting sub division of the property in fraudulent manner. Apart from that it is also stated that the main defendants have no say in the property. They are absolutely strangers. It is a collusive suit according to the petitioner. Now the judgment copies are also filed before this Court. The discussion in Paragraph No.8 of the judgment does indicate that it is an issue between the parties over location of the property purchased by the plaintiffs in the present suit and as well as the plaintiff in the earlier suit. There is a clear finding by the trial Court that the plaintiffs in the earlier suit failed to locate the property purchased by the defendant in the earlier suit, in the old Survey number. Now in the present suit, an advocate commissioner has also been appointed.



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According to the revision petitioner, it is a second attempt on the part of plaintiff after sub division. In which portion, the property purchased by the plaintiff is located in the entire 33 cents, is a matter for consideration. Unless this revision petitioner is also added as a party that cannot be resolved, since the revision petitioner is a proper and necessary party.

6. On that sole ground, the order passed by the learned II Additional Sub Judge, Madurai. in I.A.No.133 of 2022 in O.S.No. 776/2016 dated 20.04.2022, is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition stands closed.

27.03.2024

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

- 1.The II Additional Sub Judge, Madurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN, J.

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