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C.R.P.(MD)No.2938 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.2938 of 2023

and

CMP (MD) No.15145 of 2023

R.Govinda Rajalu : Petitioner/1st Respondent/
Defendant

Vs.

1.S.Rosy : 1st Respondent/Petitioner/
3rd party

2.M.Sankar @
Sankaranarayanan : 2nd Respondent/2nd Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 26/06/2023 passed in IA No.9 of 2022 in OS No.486 of 2018 on the file of the 2nd Additional District Munsif Court, Tirunelveli and pass such further or other orders.

For Petitioner : Mr.M.P.Senthil

For 1st Respondent : Mr.N.Tamil Mani

For 2nd Respondent : No appearance



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This civil revision petition is filed seeking to set aside the fair and decreetal order, dated 26/06/2023 passed in IA No.9 of 2022 in OS No.486 of 2018 by the 2nd Additional District Munsif Court, Tirunelveli.

2.The facts in brief:-

A suit in OS No.486 of 2018 was filed by the plaintiff namely M.Sankar @ Sankaranarayanan as against the petitioner herein namely R.Govinda Rajalu seeking the relief of declaration of his title by adverse possession; and for consequential injunction and for costs. Pending the proceedings, IA No.9 of 2022 was taken out by the third party namely S.Rosy to implead herself as party defendant. That petition was allowed.

3.Against which, this civil revision petition is preferred by the defendant namely Govinda Rajalu.

4.The third party filed the petition with the following averments:-

The suit property originally belongs to the plaintiff's mother namely Renganayaki Ammal and his grand



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mother Ramakrishna Ammal. Originally, the suit was decreed ex-parte. The plaintiff sold the property to her, on 29/12/2020. On 06/01/2021, the defendant broke open the lock and occupied the property. Now he is in continuous illegal possession. Another suit, in OS No.38 of 2021 was also filed by the defendant against her. Without disclosing the decree against her, the suit is filed.

5.That was resisted by the defendant stating that it is a collusive decree between the plaintiff and the 1st respondent herein namely the third party. The sale deed is also not true and genuine. *Ex-parte* decree was also set aside. Since it is a title dispute between the plaintiff and the defendant, third party is not a necessary party. Right from 1982, there was litigation between the plaintiff and the defendant. Renganayaki Ammal sold her half share in favour of the defendant's grand-mother namely Subbulakshmi Ammal, on 20/03/1981. The remaining half share belongs to Ramakrishna Ammal. So, Subbulakshmi Ammal filed a suit in OS No.174 of 1982 before the District Munsif Court, Tirunelveli. That was transferred to the Sub Court, Tirunelveli and renumbered as OS No.185 of 1985. Later, Ramakrishna Ammal filed a suit along with the alternative prayer on the file of the



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Sub Court, Tirunelveli in OS No.358 of 1982. It was finally decided in SA No.1326 and 1327 of 1990, on 02/04/2004. So the defendant's grand-mother namely Ramakrishna Ammal is entitled for half share. After the death of her father, they are in possession and enjoyment.

6.After hearing both sides, the trial court was of the considered view that since it is a suit for declaration, when the third party claims rival title, for binding adjudication, they must also be impleaded as parties. Similarly, the pendency of the civil suit is also taken into account.

7.Aggrieved over the same, the defendant is before this court.

8.In the grounds, it has been stated that the suit in OS No.55 of 2023 is also filed by the third party independently before the 1st Additional District Judge, Tirunelveli seeking the relief of possession. So, she ought to have been impleaded as party defendant. So, the learned counsel appearing for the petitioner would submit that it is nothing, but a collusive petition between the plaintiff and the third party, when the ex-parte decree was in force.



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9. According to the third party namely the first respondent herein, she purchased the property. Since the main issue is only between the plaintiff and the first respondent, nowhere this petitioner is right to interfere and can be adjudicated.

10. But I am unable to agree with this line of agreement for the simple reason that suit in OS No.55 of 2023 is also filed by the third party namely the first respondent herein. Whether the sale deed executed by the defendant, during the course of *ex-parte* decree proceedings will confer title upon the first respondent, is a matter for consideration by the trial court. One suit is for declaration and another suit is for recovery of possession. Now both are pending. The result of the one suit will have effect upon the another suit. Since both are interconnected, I am of the considered view that the order passed by the trial court does not suffer from any illegality or irregularity.

11. As mentioned above, whether is a collusive one or not cannot be a matter for consideration by this court. It is purely a factual aspect, which got to be adjudicated during the trial process.



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12. So I find no merit in this revision and accordingly, it is dismissed, of course, with a direction to the trial court to club both the matters and proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

23/02/2024

Index: Yes/No
Internet: Yes/No
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To,

The II Additional District Munsif Court,
Tirunelveli.



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G.ILANGOVAN, J

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