



C.R.P.(MD)No.1322 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD).No.1322 of 2023

and

C.M.P.(MD).No.6584 of 2023

Thanjavur Chamber of Industries Commerce,
Welfare Trust,
Rep by its President,
B.Ravikumar

... Petitioner

Vs.

1.M.Nethaji

2.Durai Balasundaram

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 12.12.2022 passed in I.A.No.80 of 2022 in O.S.No.392 of 2017 on the file of learned Additional District Munsif Court, Thanjavur.

For Petitioner :Mr.M.P.Senthil



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ORDER

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This civil revision petition has been filed to to set aside the fair and decreetal order dated 12.12.2022 passed in I.A.No.80 of 2022 in O.S.No.392 of 2017 on the file of learned Additional District Munsif Court, Thanjavur.

2. The petitioner is the plaintiff in O.S.No.392 of 2017 before the Additional District Munsif Court, Thanjavur. The suit has been filed for bare injunction to restrain the second respondent from interfering with the peaceful possession of the suit scheduled property measuring an extent of 4800 sq.ft., of vacant land. In the suit, the second respondent herein, who has been arrayed as a sole defendant, has filed a written statement. In the written statement in paragraph No.16, the second respondent has stated as follows:

"16. The defendant has leased out the above said properties including the suit property to one Nethaji through a registered lease deed dated 31.03.1998 and the leasee has been enjoying the same. At present the defendant is in possession and enjoyment of



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larger extent of property including the suit property through his above said leasee Nethaji. The larger extent of properties including the suit property are enclosed with fence and readymade cement slab compound wall. Within the enclosure there are several R.S.Pathy trees with flex board erected by the defendant mentioning the order of the Hon'ble High Court."

3. It is noticed that in the written statement, the second respondent has stated that he is in possession of the property pursuant to the sale agreement on 04.03.1967, which is said to have been executed by one Srinivasa Mooppanar, who appears to be a vendor of the plaintiff, who sold the property to the petitioner on 10.10.2008. The first respondent who claims to be the lessee of the second respondent filed I.A.No.80 of 2022 under Order 1 Rule 10 of Civil Procedure Code to implead himself as a second defendant in the above suit. The same has been allowed by the learned Additional District Munsif, Thanjavur, vide impugned order dated 12.12.2022 with the following observations:



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6. இம்மனுவில் தீர்மானிக்க கூடிய பிரச்சனை யாதெனில்? மனுதாரரின் இம்மனு அனுமதிக்க தக்கதா? என்பதே ஆகும்.

இம்மனுவானது மனுதாரரை அசல் வழக்கில் தரப்பினராக சேர்க்க வேண்டும் என தாக்கல் செய்யப்பட்டுள்ளது. தாவா சொத்துடன் கூடிய புல எண்கள் 313, 314 மற்றும் 315 சொத்துக்களை 1-ம் எதிர் மனுதாரரிடம் இருந்து பதிவு செய்யப்பட்ட குத்தகை ஆவணமாக 30 ஆண்டு கால குத்தகைக்கு பெற்று மனுதாரர் மனு சொத்தின் அனுபவத்தில் இருப்பதாகவும், இந்நிலையில் 1-ம் எதிர் மனுதாரர் கடந்த 18.03.2023 அன்று தாவா சொத்தில் உள்ள கம்பவுண்டை இடித்திவிட்டனர் என்றும், இந்நிலையில் தாவா சொத்து மனுதாரரின் அனுபவத்தில் இருப்பதால் வழக்கில் தரப்பினராக சேர்க்க கோரி இம்மனு தாக்கல் செய்யப்பட்டுள்ளது. மனுதாரர் தனது தரப்புக்கு ஆதரவாக மாசாஆ.1 முதல் மாசாஆ.5 வரையான ஆவணங்களை குறியீடு செய்துள்ளனர். அதில் மா.சா.ஆ. 1 ஆக இரண்டாம் எதிர்மனுதாரர்/ பிரதிவாதி மனுதாரருக்கு எழுதி கொடுத்த குத்தகை பத்திரத்தில் சான்றிட்ட நகல் குறியீடு செய்யப்பட்டுள்ளது. தாவா சொத்துடன் கூடிய புல எண் 313, 314 மற்றும் 315 ஆகியவற்றில் ஏக்கர் 20 சென்ட் மனுதாரருக்கு குத்தகை ஆவணம் ஏற்படுத்தி கொடுக்கப்பட்டுள்ளது என அறிய முடிகிறது. மாசாஆ 2 முதல் மாசாஆ.4 ஆவணங்களாக



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வில்லங்க சான்றிதழ் குறியீடு செய்யப்பட்டுள்ளது. மாசாஆ.1 குத்தகை குறித்த பதிவுகள் மாசாஆ.2 முதல் மாசாஆ.4 வரையிலான ஆவணங்களில் பதிவாகியுள்ளது. மாசாஆ.5 ஆக தாவா சொத்திற்கான புகைப்படம் மற்றும் குறுந்தகடு குறியீடு செய்யப்பட்டுள்ளது. மாசா.1 முதல் மாசாஆ.5 ல் இருந்து மனுதாரர் தாவா சொத்தை பொறுத்து பதிவு செய்யப்பட்ட குத்தகை ஆவணம் ஏற்படுத்தி உள்ளதாக அறியமுடிகிறது. தாவா சொத்து கடந்த 10.10.2008-ல் 1-ம் எதிர் மனுதாரர்/வாதியால் கிரையம் பெறப்பட்டுள்ளதாக சாட்சி செய்யப்பட்டுள்ளது. இந்நிலையில் தாவா சொத்தை பொறுத்து மனுதாரர் பெயருக்கு பதிவு செய்யப்பட்ட குத்தகை ஆவணம் ஏற்பட்டுள்ள நிலையில், மனுதாரரை இவ்வழக்கில் தரப்பினராக சேர்த்தால் மட்டுமே முழுமையான தீர்வு காண இயலும் என்றும், அசல் வழக்கில் முறையான தீர்வுகான உரிய தரப்பினர்களை சேர்ப்பது அவசியம் என இந்நீதிமன்றம் கருதுகிறது.

7. இறுதியாக மனுதாரரின் இம்மனு செலவுத்தொகையின்றி அனுமதிக்கப்பட்டு உத்தரவிடப்படுகிறது.

4. The learned counsel for the petitioner submits that the petitioner is the plaintiff in the suit. Therefore, it is not open for the third



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party like the first respondent, though he himself impleaded as the party to the proceedings. That apart, it is submitted that the relief is sought for only against the second respondent herein (sole defendant) and not against the first respondent, who has been now impleaded.

5. The learned counsel for the petitioner drew attention of this Court and relied upon the decision of the Honourable Apex Court, reported in **2022 (2) MWN (Civil) 789** in the case of *Asian Hotel (North) Ltd Vs. Alok Kumar Lodha & Others*, wherein it reads as follows:

*9.0. From the impugned Order passed by the High Court, it appears that what has weighed with the High Court is that Plaintiffs, is the dominus litus and heavy reliance is placed in the case of **Kasturi** (supra). However, the principle, that the Plaintiffs is the dominus litus shall be applicable only in a case where parties sought to be added as Defendants are necessary and/or proper parties. Plaintiffs cannot be permitted to join any party as a Defendant who may not be necessary and /or proper parties at all on the ground that the plaintiffs is the dominus litus.*

and another decision of the Apex Court, reported in **2010 (5) CTC 354** in



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the case of Mumbai International Airport Pvt Ltd., Vs. Regency Convention Centre & Hotels Pvt.Ltd, and others, wherein it was held as follows:

8. The general rule in regard to impleadment of parties is that the Plaintiff in a Suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the Plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"Court may strike out or add parties-

(2) The Court may at any stage of the proceedings, either upon or without the Application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or



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Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit, be added."

The said provision makes it clear that a Court may, at any stage of the proceedings (including Suits for Specific performance), either upon or even without any Application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as Plaintiff or Defendant, but not added; or (b) any person whose presence before the Court may be necessary in order to enable the Court to effectively and completely adjudicate upon and settle the question involved in the Suit. In short, the Court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the Suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the Court to



completely, effectively and adequately adjudicate upon all matters in disputes in the Suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the Suit is decided against the Plaintiff, will not make such person a necessary party or a proper party to the Suit for specific performance.

6. In my view, the impugned order allowing the I.A.No.80 of 2022 filed by the first respondent herein to implead him as the second defendant cannot be interfered with, as admittedly, there is an averment in the written statement that the second respondent is in possession of the suit scheduled property and thus a portion of the same has been leased out to the first respondent herein. Therefore, the order impleading the first respondent as a second defendant cannot be interfered with. In my view, the first respondent is an appropriate party as a proper party along with the second respondent who is a necessary party for the fair



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adjudication of the decision in O.S.No.292 of 2017 filed by the petitioner
for bare injunction.

7. It is seen that the suit is of the year 2017. The first respondent has been impleaded vide impugned order dated 12.12.2022. By now, the first respondent should have filed a written statement. In case, written statement has not been filed, the first respondent shall file the same, within a period of 30 days from the date of receipt of a copy of this order. Thereafter, the trial Court shall proceed with the trial and dispose of the same on merits and in accordance with law within a period of six months.

8. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC :Yes / No

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Index :Yes / No

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