



C.R.P.(MD)Nos.11, 12 and 13 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)Nos.11, 12 and 13 of 2018

and

C.M.P.(MD)No.73 of 2018

C.R.P.(MD)No.11 of 2018

1.K.Dharmar

2.Manjula ... Petitioners/ Respondents 8 & 9/ Defendants 8 & 9

Vs.

1.Ganesan

2.Palanichamy ... Respondents 1&2 / Petitioners/ Plaintiffs

Karuppayee (Died)

3.Muthu

4.Alamelu

5.Saraswathi

6.Murugan

7.Sivalingam

8.Ramayee ... Respondents 3to 8 /Respondents 2 to 7/

Defendants 2 to 7

9.M.Radhakrishnan ... 9th Respondent / 10th Respondent /

10th Defendant



C.R.P.(MD)Nos.11, 12 and 13 of 2018

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 12.01.2017 in I.A.No. 1394 of 2016, in O.S.No.181 of 2004, on the file of the Additional District Munsif, Dindigul.

C.R.P.(MD)No.12 of 2018

1.K.Dharmar

2.Manjula ... Petitioners/ Petitioners / Defendants 8 & 9

Vs.

1.Ganesan

2.Palanichamy ... Respondents / Respondents/ Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to issue suitable direction to the trial Court to number the unnumbered I.A.No.SR3435 of 2017, in O.S.No.181 of 2004, on the file of the Additional District Munsif, Dindigul.

C.R.P.(MD)No.13 of 2018

1.K.Dharmar

2.Manjula ... Petitioners/ Petitioners / Defendants 8 & 9

Vs.

1.Ganesan

2.Palanichamy ... Respondents / Respondents/ Plaintiffs



C.R.P.(MD)Nos.11, 12 and 13 of 2018

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 01.11.2017 in I.A.No.864 of 2017, in O.S.No.181 of 2004, on the file of the Additional District Munsif, Dindigul.

(In all C.R.Ps.)

For Petitioners : Mr.H.Lakshmi Shankar

For Respondents : Mr.N.Manivel for R1 & R2

COMMON ORDER

C.R.P.(MD)No.11 of 2018 has been filed against the order, dated 12.01.2017 in I.A.No.1394 of 2016, in O.S.No.181 of 2004, in an application filed under Order 6 Rule 17 of C.P.C., on the file of the Additional District Munsif, Dindigul.

2. C.R.P.(MD)No.12 of 2018 has been filed to issue suitable direction to the trial Court to number the unnumbered I.A.No.SR3435 of 2017, in O.S.No.181 of 2004, filed to strike out the suit schedule 1 and 2 property from the plaint, pending on the file of the Additional District Munsif, Dindigul.



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3. C.R.P.(MD)No.13 of 2018 has been filed against the order, dated 01.11.2017 in I.A.No.864 of 2017, in O.S.No.181 of 2004, in an application filed under Order 1 Rule 10 C.P.C., on the file of the Additional District Munsif, Dindigul.

4. In C.R.P.(MD)Nos.11, 12 and 13 of 2018, the revision petitioners herein are the defendants 8 and 9, the respondents 1 and 2 herein are the plaintiffs before the trial Court. In C.R.P.(MD)No.11 of 2018, the respondents 3 to 8 are the defendants 2 to 7 and the 9th respondent is the 10th defendant before the trial Court.

5. Since all the Civil Revision Petitions are intertwined one arriving from same suit, all the Civil Revision Petitions are taken for common disposal.

6. For the sake of convenience, the parties are referred according to their litigative status before the trial Court.



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7. The short facts, which give rise to the instant Revision Petitions, are that:

The respondents 1 and 2 / plaintiffs have filed a suit for the relief of partition and for declaration. According to the plaintiffs, one Kuttiyappan is the father of Kamatchi, Karuppayee and Ramayee. Karuppayee is the first defendant and Ramayi is the seventh defendant in the suit. The plaintiffs and the tenth defendant are the legal heirs of the said deceased Kamatchi. As per the plaint averments, the first defendant -(late) Karuppayee and her husband- Andiappan by playing fraud and misrepresentation, has obtained sale deed in their favour, in respect of the first and second items of the suit property, vide sale deed, dated 13.02.1962, and that after the demise of the first defendant's husband- Andiappan, she has executed a sale deed in favour of the defendants 8 and 9 along with her legal heirs, who are defendants 2 to 6. Therefore, the plaintiffs submit that the sale deed stands in the name of the defendants 8 and 9, which is sham and nominal. Therefore, they sought for the relief of declaration, to declare the sale deed stands in the name of the defendants 8 and 9 as sham and nominal and void.



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11. However, the learned trial Judge has allowed the application by relying Order 1 Rule 10 (2) C.P.C, and further observed in the order that in a suit for partition between the co-sharers, the subsequent purchasers can not be a necessary parties, however, can work out their remedy in the final decree application.

12. Aggrieved with the order of the learned trial Judge, the defendants 8 and 9 have filed the revision petition in C.R.P.(MD)No.11 of 2018

13. The learned counsel for the revision petitioners would submit that while objecting the amendment application filed by the respondents 1 and 2, this petitioner has also filed an application for impleading themselves as the parties to the suit. Therefore, he would submit that when the defendants 8 and 9 were already parties to the suit and filed an application for impleadment the order passed in amendment application though consequential in nature, cannot be allowed, in view of the subsequent development of filing impleading application by this petitioners and hence, prayed to allow this petition.



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14. In this regard, the learned counsel for the petitioners herein would rely upon the judgment of the Hon'ble Supreme Court reported in **2010-7-SCC-417 (Mumbai International Airport Pvt. Ltd., V. Regency Convention Centre and Hotels Pvt. Ltd.)**. The relevant paragraph reads 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 I 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 defendant, or whose presence before the Court may be



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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



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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.”

15. He would also rely upon the judgment of this Court reported in **1918-7-LW-234 (Vaddadi Sannamma V. Koduganti Radhabhayi)**. The relevant paragraph reads as follows:-

“1. I am clearly of opinion that, when a party has been properly impleaded as one of the defendants in a case and the case as against him would have proceeded to judgment but for the fact that the plaintiff elected to abandon part of his case and the suit was in consequence dismissed as against this defendant, he is "a defendant, against whom a suit has been dismissed," within the meaning of the explanation to Section 47, Civil Procedure Code. The case which came before the Court in Krishnappa Mudali v. Periasami Mudali (1917) 32 M.L.J. 532, of a misjoinder of causes of action and of the plaintiff being required to proceed with one cause of action, only and the suit being dismissed as against the defendants who had been joined in respect of the other cause of action only, may possibly stand on a different footing, as to hold that the cause of action which the Court was prohibited from trying may be gone into



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in execution by virtue of Section 47 goes far to defeat the prohibition of joinder, and such a construction of S. 47 should therefore be avoided if it is possible to do so. As that question is not before us, I express no opinion upon it, and will only say that the proper course in these cases appears to be for the Court to exercise the power which it now has under Order 1, Rule 10(2) of ordering at any stage of the proceedings, the name of a defendant improperly joined to be struck out, instead of dismissing the suit as against him. That will, as held by the Full Bench in Ramaswami Sastrulu v. Kameswaramma (1900) I.L.R. 23 Mad. 361 : 10 M.L.J. 123, have the effect of taking him out of the operation of Section 47, which ought not to apply to him seeing that he has no real concern with the suit. I would answer the first question in the affirmative.”

16. He would also rely upon the judgment of the High Court of Bombay reported in **2003 - 0 - Supreme (Mah)-28 (Anil Dinmani Shankar Joshi V. Chief Officer, Panvel Municipal Council)**. The relevant paragraph reads as follows:-

“3. Order XXIII Rule 1 of the Code of Civil Procedure permits the plaintiff at any time after the institution of the suit to abandon the suit or abandon a part of the claim in the suit against all or any of the defendants. No permission



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of the Court is necessary for the plaintiff to unconditionally abandon his claim or any part of his claim against all or one or more of the defendants. Abandonment is complete as soon as the plaintiff informs the Court. No order of the Court is necessary though the Court often passes formal order recording the abandonment. In this connection, reference may be made to the decision of the Apex Court in Shiv Prasad v. Durga Prasad wherein the Court observed in paragraph No. 12 of the Judgment as follows:

"Every applicant has a right to unconditionally withdraw his application and his unilateral act in that behalf is sufficient. No order of the Court is necessary permitting him to withdraw the application. The Court may make a formal order disposing of the application as withdraw but the withdrawal is not dependent on the order of the Court. The act of withdrawal is complete as soon as the applicant intimates the Court that he withdraws the application."

4. In my opinion, what is said by the Apex Court in respect of an application applies with equal force to the suit. Every plaintiff has an unconditional right to withdraw his suit unconditionally. The withdrawal would be complete as soon as the plaintiff files a purshis of withdrawal. The Court may pass a formal order recording the withdrawal and also make an order regarding costs, but the withdrawal is not dependent on the order of the Court. This could apply also where the plaintiff seeks withdrawal of the suit against one or more of



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the defendants and the withdrawal would be complete against those defendants as soon as the plaintiff files an application/purshis for withdrawal. The Court may then consider whether the suit survives against the other defendants against whom suit is not withdrawn. If it comes to the conclusion that the defendant or defendants against whom the suit is withdrawn was or were necessary parties, the Court would then be entitled to dismiss the suit against all on the ground of non-joinder of the necessary parties. But the Court cannot refuse to allow the withdrawal on the ground that the person against whom the suit is sought to be withdrawn is a necessary party.”

17. Per contra, the learned counsel for the respondent would submit that when the petitioners herein/defendants 8 and 9 have already been exonerated, the amendment which sought for is only consequential in nature, and he would also submit that when the plaintiffs being a Dominos litus, he has got every right to choose as to against whom, he seeks a relief. In this regard, he would also rely upon the judgment of the High Court of Karnataka, reported in **1988-2-KantLJ-387 (Parvathamma B.N. V. B.M.Nagaraja Setty)**. The relevant paragraph reads as follows:-



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“2. Without an amendment to the plaint that such a sale is not binding on the plaintiffs, the purchaser does not become a necessary party in a partition suit. It is also further held that if the said Chandramma is a purchaser pendente lite then that sale would not enure to her benefit on account of the doctrine of lis pendente. Looked at in any way she is not a necessary party. Whether the properties sold to Chandramma are part of the joint family properties is a question of fact to be established, if it is disputed. If there is no amendment to the plaint in regard to certain sales not binding on the plaintiffs then that amendment should be carried out first before the affected parties are impleaded ”

18. He also rely upon another judgment of this Court reported in **1999-III-CTC-335 (S.Ramaswamy V. The State of Tamil Nadu rep. its Collector)**. The relevant paragraph reads as follows:-

“17. It has not been shown in the present case as to how the respondents would be affected by the on-impleading of the second respondent as a party. The decision of the lower Court for the reasons already stated cannot stand. It has also not been shown that the second respondent had any legal interest in the subject matter of the suit. It is not possible to hold that the second respondent could be impleaded in the suit merely for the



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purpose of enabling the first respondent State to see that the suit is properly defended. As already observed, it is upto the first respondent to utilize the services of the second respondent and his officials and the records available in his office to defend the suit. There could be absolutely no objection to this course being adopted for proper defence of the suit.”

19. I have given my anxious consideration to the either side submission.

20. It is an admitted fact that the respondents 1 to 7 and 10 were already set *exparte*. The only contesting defendants are the petitioners herein / defendants 8 and 9. According to the facts of the case, the suit schedule property 1 and 2, which the petitioners / defendants 8 and 9 purchased, was originally owned by one Kuttiyappan. According to the plaint averments, after the demise of Kuttiyappan, his property devolved upon his three daughters, namely, Karuppayee and Ramayee, who are parties to the suit as defendants 1 and 7 and the another daughter – Kamatchi, who is pre-deceased. After the demise of Kamatchi, her legal heirs, viz., Ganesan and Palanichamy have filed the suit for partition, and



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their brother Radhakrishnan was arrayed as the 10th defendant. More curiously, in respect of three suit scheduled property, schedule 1 and 2 belong to the petitioners herein. The sum and substance of the above discussion is that the only contesting parties in the suit are the persons having interest over the suit property, namely, the petitioners herein.

21. While this being so, it appears that the plaintiffs have filed a memo exonerating the petitioners herein, vide memo, dated 03.11.2016. After a period of 12 years, that too when the suit is in part heard stage. The reason assigned by the plaintiffs for exoneration is mentioned in the affidavit filed in I.A.No.394 of 2016. Wherein the plaintiffs stated that, the petitioners herein can get a declaration separately in respect of sale deed, which covers suit schedule 1 and 2 property.

22. At this juncture, to understand the whole gamut of issue, this Court would like to extract the prayer by the plaintiff sought in the plaint:

□1. இந்த நம்பர் பிராதிற் கண்டுள்ள சொத்துக்களில் வாதிகளின் 1/3 பாகத்தை 1-ம் பிரதிவாதி நயமிடர் பார்த்து பிரித்து வாதிகளுக்கு தனித்த சுவாதீனம் கொடுக்கும்படிக்கும், முதல் நிலை தீர்ப்பாணை வழங்கும்படிக்கும்,



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2. அவ்வாறு 1-ம் பிரதிவாதி பிராது சொத்துக்களில் வாதிகளின் 1/3 பாகத்தை பிரித்துக் கொடுக்க மறுக்கும் பட்சத்தில் சமூகம் கோர்ட்டாரவர்கள் கமிசனர் ஒருவரை நியமித்து சொத்துக்களை பார்வையிட்டு வாதிகளுக்கு தக்க சுவாதீனம் கொடுக்கத்தக்கதாய் பைனல் டிக்கிரி பாஸ் செய்யும்படிக்கும்,

3. பிராது 1,2 சொத்துக்களில் 1 முதல் 6 பிரதிவாதிகள் 8, 9 பிரதிவாதிகளுக்கு 05.11.199-ஆம் தேதியில் எழுதிக் கொடுத்து இருக்கும் கிரையப்பத்திரம் வாதிகளின் பாகத்தை கட்டுப்படுத்தாது Sham nominal void என் டிக்ளேர் செய்யும்படிக்கும்,

4. பிராது 1,2 லக்க சொத்துக்களில் 8, 9 பிரதிவாதிகள் யாதொரு ஆக்கிரமிப்பும், தடையும், இடைஞ்சலும் செய்யாதபடிக்கும் மேற்படியார்கள் மீது ஒரு நிரந்தர உறுத்துக்கட்டளை உத்தரவு வழங்கும்படிக்கும், the 3rd and 4th Prayer were Exonerated as per the Memo filed by the plaintiff on 03.11.2016.□

in which, in the impugned amendment, the prayer, in respect of 3 and 4, viz., the validity, was prayed to be deleted. At this juncture, this Court would like to mention that when the plaintiffs themselves impleaded them as proper and necessary parties and conducted the suit for 12 years, all of sudden exonerating them, however, claiming share over the very same property which stands in the name of this petitioners/ defendants 8 & 9, would only shows the dichotomy of the plaintiffs' / respondents' case.



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23. Another angle of the case is that when the suit schedule 1 and 2 property was purchased by the defendants 8 and 9 as early as on 05.11.1998, that too, from the parents of the defendants 2 to 7, based upon the title flown from the sale deed, dated 13.02.1962, which stands in the name of the first defendant and her husband – Andiappan, very strangely, they sought for declaration only in respect of sale deed, dated 05.11.1998, which stands in the name of defendants 8 and 9 and not against the parental deed, dated 13.06.1962, which only probablise the tacit admission of the plaintiffs over the sale deed of the year 1962.

24. Thus, the crest and trough of the above narration is that, when the petitioners herein / defendants 8 & 9 are the owner of the suit schedule 1 & 2 property, even prior to the institution of the suit, in a subsequently instituted partition suit, which challenge the sale deed of the petitioners / defendants 8 & 9, executed by the other co-sharers, then naturally the person, in whose name the property stands at the time of filing the suit for



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partition would necessarily become necessary and proper party.

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25. Here, even in the plaint, they referred about the earlier sale deed, dated 05.11.1998, and that is why they sought for the relief rightly in the plaint. However, taking advantage of the subsequent development, when the defendants 1 to 7 and 10, did not contest and were, set exparte, to avoid the defendants 8 and 9, who stoutly contested the case, has simply exonerated them. But, they sustained the prayer for partition in respect of the property stands in the name of defendants 8 and 9. Such conduct is nothing, but, *malafide*. Because, in the event of passing of preliminary decree, for any partition ignoring the petitioners herein, then, it would lead to multiplicity of proceedings and their alleged right will be jeopardized. Thus, this Court is inclined to allow the revision in C.R.P.(MD)No.11 of 2018, dismissing the amendment application, which entitled the plaintiffs to remove these petitioners / defendants 8 and 9 from the array of party.

CRP(MD)No.13 of 2018

26. Since the C.R.P.(MD)No.11 of 2018 is allowed, wherein the defendants 8 and 9 are necessary parties, the impleading petition filed by



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the defendants 8 and 9 are also liable to be allowed by allowing the C.R.P.
(MD)No.13 of 2018.

CRP(MD)No.12 of 2018

27. This Court as per the order passed in C.R.P(MD)No.11 of 2018 and C.R.P.(MD)No.13 of 2018, retained the defendants 8 and 9, as party to the suit. In view of the same, there is no necessity to strike out schedule 1 and 2 of the suit property. Hence, **CRP(MD)No.12 of 2018 is dismissed.**

28. In the result, C.R.P.(MD)No.11 and 13 of 2018 are **allowed** and C.R.P.(MD)No.12 of 2018 is **dismissed**. It is made clear that the learned trial Judge is directed to proceed with the case without being influenced with any of the observation made in these Civil Revision Petitions, in respect of the merits of the case. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2023

NCC : Yes/No
Index : Yes/No
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To

- 1.The Additional District Munsif,
Dindigul.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

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