



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2023

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2193 of 2022
and
C.M.P.(MD)No.10217 of 2022

T.Jeyanthi Mala	... Revision Petitioner/Petitioner/Third Party/ Third Party/Third Party
Vs.	
1.Sathiyamoorthy	... 1 st Respondent/1 st Respondent/ Petitioner/Petitioner/Plaintiff
Maruthupandi (Died) Son of Appavu Thevar	... 2 nd Respondent/2 nd Respondent/ 1 st Respondent/1 st Defendant
2.Ramamoorthi	
3.Brindhavanam	
4.Chinnaththai @ Senbagam	... Respondents 2 to 4/Respondents 2 to 5/ Respondents/Respondents/Defendants 2 to 4

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside fair and decreetal order dated 05.09.2022 in E.A.No.3 of 2018 in E.A.No.34 of 2017 in E.P.No.1 of 2017 in O.S.No.102 of 2002 on the file of the learned District Munsif Cum Judicial Magistrate, Rameswaram.

For Petitioner	: Mr.V.Panneer Selvam
For 1 st Respondent	: Mr.S.Balamurugan
For Respondents 2 to 4	: No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed E.A.No.3 of 2018 in E.A.No.34 of 2017 in E.P.No.1 of 2017 in



O.S.No.102 of 2002 dated 05.09.2022, on the file of the learned District Munsif
Cum Judicial Magistrate, Rameswaram.

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2.The petitioner is the third party to O.S.No.102 of 2002, which was filed by the first respondent against the respondents 2 to 4 herein. The suit was filed for a declaration and recovery of possession of a land described as pathway in the schedule to the plaint in O.S.No.102 of 2002. The suit was decreed on 26.01.2008. After the suit was decreed, the respondent filed E.P.No.1 of 2017 and thereafter, filed E.A.No.34 of 2017 under Order 21 Rule 97 of CPC. In the suit proceedings, the respondent filed E.A.No.3 of 2018, which was dismissed by the Court on the following observation:-

“மேலும் 1ம் எதிர்மனுதாரர்/வாதி தரப்பில் E.P.No.1 of 2017 மனுவில் கட்டளை 1 விதி 10(2) மற்றும் 151 சிபிசி படி மனுதாக்கல் செய்ய முடியாது என ஆட்சேபிக்கப்பட்டது. இதுகுறித்து பரிசீலனை செய்கையில், இதுசம்மந்தமாக மனுதாரர் தரப்பில், மாண்புமிகு சென்னை உயர்நீதிமன்றம் என்ற முன்தீர்ப்பினை சுட்டிக் காட்டப்பட்டது. மேற்படி முன்தீர்ப்பில் சொல்லப்பட்ட வழக்கின் தன்மை மற்றும் சங்கதிகள் வேறு. இந்த வழக்கின் தன்மை மற்றும் சங்கதிகள் வேறு. எனவே, மேற்படி முன்தீர்ப்பில் சொல்லப்பட்ட கோட்பாடு இந்த மனுவில் தன்மை மற்றும் சங்கதிகளுக்கு பொருந்துவதாக இல்லை. ஷை தீர்ப்பில் Land acquisition மனுவில் ஏற்பட்ட உத்திரவின் படி தாக்கல் செய்த நிறைவேற்றுதல் மனுவில்தான் ஆர்டர் 1 ரூல் 10(2) சிபிசின் கீழ் மனு தாக்கல் செய்யலாம் என சொல்லப்பட்டுள்ளது.□

3.The learned counsel appearing for the petitioner submits that the petitioner



is entitled to intervene as the property of the petitioner is sought to be demolished by seeking to recovery of property of the petitioner.

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4.Per contra learned counsel appearing for the respondents/decreed holders would submit that the petitioner is the stranger to the proceedings. That apart it is submitted that the application filed for impleading the petitioner under Order 1 Rule 10 of CPC cannot be countenance. It is for the petitioner to file appropriate application under Order 21 Rule 58 of CPC as at appropriate time.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

6.The petition that has been filed by the respondent under Order 21 Rule 97 of CPC is inconsonance with Section 47 of CPC. Therefore, the petitioner is entitled to be impleaded as all questions arising between the parties to the suit, in which the decree was passed and relating to execution, discharge and satisfaction of decree shall be determined by the Court by executing the decree not by a separate suit. The petitioner is precluded from filing separate suit as the respondents have already secured a judgment and decree in respect of suit and schedule property in respect of which the petitioner claims a right.

7.Considering the above, I am inclined to set aside the impugned order and



allow E.A.No.3 of 2018. Consequently, the petitioner shall be impleaded as the fifth

C.SARAVANAN,J.

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Mrn

respondent in E.P.No.1 of 2017. The Court shall hear the parties and pass appropriate orders in merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

8.Accordingly, this Civil Revision Petition is allowed. No Costs.
Consequently, connected miscellaneous petition is closed.

22.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

To

1.The District Munsif cum Judicial Magistrate, Rameshwaram.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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