

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.84 of 2012
and
M.P.No.1 of 2012**

1.Karuppasamy
2.Avinasiappan

.. Petitioners

Vs.

St. Lourde's Church,
Rep. by
Father Vincent Paulraj,
Lourdupuram, Avinashi Taluk,
Tiruppur District.

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 31.10.2011 passed in I.A.No.1097 of 2011 in O.S.No.224 of 2011, on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.K.Govi Ganesan

For Respondent : Mr.R.Sivaraman

ORDER

The case of the revision petitioners is that the respondent herein filed a suit for declaration and permanent injunction against one Rajamanikam and 2 others in O.S.No.224 of 2011 on the file of the District Munsif Court, Avinashi.

2.The case of the plaintiffs is that they are the absolute owners of the suit properties by virtue of a registered sale deed dated 25.05.1997. They have purchased the suit property with specific extent and sub-division number. From the date of their purchase, they are in actual physical possession and enjoyment over the suit property. The revenue records in respect of the suit property stands in the name of the plaintiffs and their predecessors in title for more than 30 years. The defendants have no right, title or interest over the suit property. They belonged to Christian community native of Papankulam Village, now stated to live at various places. Due to local disputes the defendants are making illegal claim that they are entitled to a portion of the suit property for burring the dead bodies. The defendants by taking advantage of the absence of the plaintiffs, on 20.06.2011 illegally trespassed into the suit properties and buried the dead body of

the 1st defendant's son who died in a road accident which necessitated the plaintiffs to file above suit.

3.The defendants filed Written Statement and contented that they are belongs to the community of Christianity and the Diocese of the said suit namely Saint. Lourde's Church, Lourdhupuram, Avinashi Taluk is having right over the portion of the suit schedule properties measuring to an extent of 60x120 feet totally 7,200 square feet. The said community people using the above said land as a grave yard and on that basis only the dead body of the 1st defendant's son was buried. They further stated that they are not the representatives of the entire Christian community. They are only the members of the said community. The defendants further stated that they unnecessary parties to the suit.

4.While so, the respondent herein namely St. Lourde's Church filed an application in I.A.No.1097 of 2011 to implead them as one of the defendant in the suit. It is averred in the impleading affidavit that the diocese purchased a portion of the property comprised in S.F.No.401/2 (now S.F.No.401/2A) to an extent of 7,200 square feet under a registered sale deed dated 28.10.1936. The diocese has been

using the above said land as a grave yard right from the date of purchase. The remaining extent of land in S.F.No.401/2 might have been belonged to the plaintiffs. The plaintiffs filed the suit as against the individuals alone, as if they are the owners of the property. But actually the diocese is the absolute owner of the above said property and therefore they are proper and necessary parties to the above suit for complete adjudication.

5.The respondent herein/plaintiff resisted the impleading application by filing counter affidavit. Upon considering the rival submission, the Learned District Munsif was pleased to allow the impleading application by order dated 31.10.2011. As against the order impleading the respondent herein is under challenge in this Civil Revision Petition.

6.I heard Mr.K.Govi Ganesan, learned counsel appearing for the petitioners and Mr.R.Sivaraman, learned counsel appearing for the respondent and records are perused.

7.It is the specific case of the respondent herein that the Church (DIOCESE) has purchased a portion of land in S.No.401/2 (Present

S.No.401/2A) as per registered sale deed dated 28.10.1963 and they also produced the certified copy of the said sale deed dated 28.10.1963 in the impleading petition as Ex.P1. They have been using the said land as grave yard for their Community people. Further, the defendants 1 to 3 in the above suit are not the representatives of St. Lourde's Church. The said fact was also clearly admitted by the defendants 1 to 3 in their Written Statement. Whether the proposed defendant/respondent herein is having right and title to the suit property or not will be decided only after trial. At this stage, the respondent herein is a just and necessary party to the suit. Therefore the Trial Court is right in allowing the impleading application by holding that no prejudice will be caused to the revision petitioner/plaintiff by impleading the respondent herein in the suit.

8.The other contention of the revision petitioner is that the respondent herein already filed a suit for declaration, to declare their title and in that suit itself, they could get the relief. The said submission was rightly negative by the Trial Court by holding that if the respondent herein is not impleaded as defendant in the present suit for declaration filed by the revision petitioner, then contradictory Judgment will be delivered and the same would affect the right of the

parties. Therefore the presence of the respondent herein is very much essential in the above the well considered order of the trial Judge needs no interference by this Court. There is no irregularity and infirmity in the order of the Trial Court and the same is confirmed.

9. At this juncture, it is useful to refer the Judgment reported in **2016 (6) CTC 765** in the case of **Robin Ramjibhai Patel –Vs- Anandibai Rama @ Rajaram Pawar and others** wherein in para No.10 it is held as follows:

“10. In our considered opinion, the Judgment of the Three- Judge Bench in the Kasturi's case (supra) recognizes this special status of a Plaintiff, which is well settled by several earlier judgments also and when the Plaintiff wants to implead certain persons as Defendants on the ground that they may be adversely affected by the outcome of the suit, then interest of justice also requires allowing such a prayer for impleadment so that the persons likely to be affected are aware of the proceedings and may take appropriate defence as suited to their vendors.”

10. In the light of the discussion made above and also in the light

of the judgment referred above, the order of the trial court allowing impleading application need not be disturbed.

11.In the result, this Civil Revision Petition is dismissed and the order and decreed made in I.A.No.1097 of 2011 in O.S.No.224 of 2011 dated 31.10.2011 on the file of the District Munsif Court, Avanashi is confirmed. No cost. Consequently, connected miscellaneous petition is closed.

23.12.2016

Note:Issue order copy on 28.04.2017
Internet:Yes
Index:Yes

vs

To

The District Munsif Court,
Avinashi.

M.V.MURALIDARAN, J.

VS

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