

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.903 of 2012

&

M.P. No.1 of 2012

Mukkappa Udayar
Son of Ramasamy Udayar
Peruvangur Village
Kallakurichi Taluk

... Petitioner

Vs.

- 1.Sivaraj Udayar
- 2.Jayarama Udayar
- 3.The District Special Revenue Officer
Land Acquisition
National Highways-68
4. The Special Tahsildar
Land Acquisition
National Highways-68

... Respondents

Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure to set aside the decretal order dated 16.11.2011 and made in I.A.No.100 of 2011 in O.S.No.7 of 2010 on the file of the 2nd Additional District Munsif Court, Ulundurpet.

For Petitioners : M/s.S.Benazir

For Respondents : Mr.T.Gandhi for R2
No appearance for R1 and R3 and R4

ORDER

This revision is filed against the fair and decretal order dated 16.11.2011 and made in the application in I.A.No.100 of 2011 in the suit in O.S.No.7 of 2010 on the file of the learned District Munsif, Ulundurpet. The revision petitioner herein is a third party to the above suit, who had sought himself to be impeaded as one of the plaintiffs in the above said suit by filing the application in I.A.No.100 of 2011 under Order I Rule 10 (2) of the Code of Civil Procedure. First respondent is the plaintiff and the respondents 2 to 4 are the defendants 1 to 3 in the suit.

2. The above said petition was resisted by the respondents and after hearing both sides, the learned trial Judge had dismissed the petition on 16.11.2011 on the ground that the revision petitioner is not a necessary party to the suit and even in his absence, the issues involved in the suit could be effectively adjudicated. Having been aggrieved by the impugned order dated 16.11.2011, the petitioner in the above said application stand before this Court with this revision.

3. The suit in O.S.No.7 of 2010 seems to have been filed by the first respondent herein for himself and on behalf of Villupuram District Bargava Community Society in the capacity of its President, seeking the relief of bare

injunction to restrain second respondent herein/first defendant from receiving the amount belonging to South Arcot District Bargava Community Educational trust, which is lying in the hands of the respondents 3 and 4 herein, who are the defendants 2 and 3 in the suit.

4. Since the application, in I.A.No.100 of 2011 which was filed by the revision petitioner for his impleadment was dismissed by the trial Court, the facts of the suit need not be traversed.

5. As aforestated, exfacie it appears that the first respondent therein had filed the above suit in the representative capacity on his behalf in the capacity of the president of Villupuram District Bargava Community Society. At the first instance, as rightly contended by the fourth respondent/third defendant in his written statement, particularly in Paragraph No.6 that without obtaining leave from the trial Court, the first respondent had filed the above said suit on his behalf and on behalf of the Villupuram District Bargava Community Society claiming himself to be its President.

6. Rule 8 of Order I of the Code of Civil Procedure contemplates that one person may sue or defend on behalf of all in same interest. Sub-rule (1) envisages that where there are numerous persons having the same interest in one suit-

(a) one or more of such persons may, with the permission of the

Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(b) The Court may direct that one or more such persons may sue or be sued or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

Sub-Rule 3 of Rule 8 of Order I reads as under:

"Any person on whose behalf or for whose benefit a suit is instituted, or defended, under Sub-Rule (1) may apply to the Court to be made a party to such suit."

7. Insofar as the suit in O.S.No.7 of 2010 is concerned, no reference is available to infer that the first respondent/plaintiff had obtained leave from the trial Court under sub-rule 1-A of Rule 8 to institute the suit on representative capacity. If it is shown that the first respondent/plaintiff had obtained prior permission or leave from the trial Court to institute the suit, it could be understood that any person, on whose behalf or for whose benefit a suit is instituted or defended to be made a party to such suit.

8. As admitted by the fourth respondent/third defendant in his written statement, an extent of land measuring 396 sq.meter in the first item and 72 square meter in the second item of 'A' schedule properties were acquired by the respondents 3 and 4 viz., defendants 2 and 3 in the suit for the expansion of Ulundurpet-Salem National Highways (NH-68) and as per the

award in R.O.C.No.297 of 2009 dated 22.10.2009, a sum of Rs.9,85,046/- is lying in the hands of the Government. Therefore, the above said suit seems to have been filed by the first respondent for himself and on behalf of the Villupuram District Bhargava Community Society to prevent the second respondent herein, who is the first defendant in the suit, from getting the above said amount from the Government.

9. As it appear from the Trust Deed dated 20.03.1990, there are 11 members in the Board of Trust. According to the second respondent/first defendant, Mr.Jayaram Udayar had only created the trust for the benefit of the Bhargava Community people and since he has been in the maintenance of the educational institutions, which is being run by the trust, he is only having competency to receive the amount for the new construction of the school buildings. However, the first respondent/plaintiff had contended in the suit that the first defendant/second respondent is trying to receive the above said amount from the hands of the respondents 3 and 4 for his personal utilization. Only under this circumstance, the revision petitioner (according to him he is also one of the members of the Trust Board) had come forward with the above said application in I.A.No.100 of 2011 for his impleadment as one of the necessary parties to the suit.

10. In his affidavit filed in support of the above said petition, he has stated that since he was also one of the members of the Managing Trust, his

presence is absolutely necessary in the suit for effective adjudication. As stated in the forgoing paragraphs, since the suit itself is not filed by the first respondent/plaintiff after obtaining prior permission under Order I Rule 8(1)(a) CPC, he could not claim that his participation in the suit is absolutely necessary.

11. The learned counsel for the revision petitioner Ms.S.Benazir has adverted to that since the petitioner was one of the managing trustees of the public trust and its properties were managed by the Board of trustees, he ought to have been given an opportunity for being heard in respect of the subject matter of the suit. She has also contended that any person interested in the trust had got right over the trust property as long as he continued to be the member of the trust. For the reasons aforestated, the contention made by the learned counsel for the revision petitioner is not able to be discerned. In support of her contention, the learned counsel for the petitioner has placed reliance upon the following two decisions:

1. ***R.Venugopala Naidu and Ors. Vs. Venkatarayulu Naidu Charities and Ors.*** Reported in ***AIR 1990 SC 444; and***
2. ***S.D.Joseph and Ors. Vs. E.Ebinesan and Ors.*** reported in ***2009 (5) CTC 193.***

12. In his counter affidavit, the second respondent herein, who is the first defendant in the suit had contended that he had been managing the

school in the capacity of managing trustee of the educational trust and that the revision petitioner did not have any nexus or connection with the Bhargava community educational trust, which was being maintained and managed by him (second respondent/first defendant).

13. 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 that general rule is subject to the provisions of Order 1 Rule 10 (2) CPC, which provides for impleadment of necessary party or proper party. As rightly observed by the learned trial Judge, the core question arises in this revision is as to whether the revision petitioner is a proper or necessary party for the effective adjudication of the suit.

14. Sub Rule (2) of Rule 10 Order I CPC envisages that 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, may be added in the suit provided his presence before the Court is necessary in order to enable the Court effectively or completely adjudicate upon and settle all the questions involved in the suit.

15. On coming to the instant case on hand, this Court is not in a position to accept the contention that the revision petitioner is either necessary or property party to be impleaded in the suit. This Court is also of the view that since the suit is not instituted under Section 92 of CPC, the above cited decisions are not applicable to the case on hand. Keeping in view of the above fact, this Court finds that the revision petition is devoid of any merit and therefore, liable to be dismissed.

In the result, the revision petition is dismissed and the impugned order dated 16.11.2011 is confirmed. The trial Court is directed to dispose of the suit within a prescribed period of three months from the date of receipt of a copy of this order without further loss of time. No costs. Consequently, the connected miscellaneous petition is closed.

15.11.2016

Index: Yes/No
Internet: Yes
gpa

To

2nd Additional District Munsif Court
Ulundurpet

T.MATHIVANAN.J.,

gpa

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