

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-12-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.(PD) No.157 of 2014
and M.P.No.1 of 2014**

1.Soundararajan
2.Mani @ Maniammal

...

Petitioners

Vs

Rajammal

...

Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.12.2013 made in I.A.No.1086 of 2013 in O.S.No.514 of 2005 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.E.P.Senniyanigiri

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ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 02.12.2013 made in I.A.No.1086 of 2013 in O.S.No.514 of 2005 on the file of the Additional District Munsif Court, Tiruchengode.

2. The first petitioner is the plaintiff in O.S.No.514 of 2005 on the file of the Additional District Munsif Court, Tiruchengode. The first petitioner filed the said suit against the respondent for permanent injunction. According to the first petitioner, the respondent tried to disturb his possession of the suit property on 19.10.2005 and hence he filed the said suit against him. The respondent filed written statement contending that the suit is for bare injunction and without declaration, the suit is not maintainable. The respondent further contended that she filed O.S.No.322 of 2005 against the petitioners on the file of the District Munsif Court, Tiruchengode and the same is still pending.

3. In the above said circumstances, the petitioners filed I.A.No.1086 of 2013 to implead the second petitioner as second plaintiff in the suit in O.S.No.514 of 2005. According to the petitioners, the first petitioner filed suit based on the patta issued in his favour. The second petitioner purchased the property vide sale deed dated 30.10.1992. In view of the same, she is necessary and proper party to the suit. The respondent filed counter in the application and denied all the averments and submitted that the first petitioner is introducing new case and the claim of the first

petitioner is barred by limitation. The learned Judge, considering the averments in the affidavit, counter affidavit, averments in the plaint and **Article 21 and Section 113 of Limitation Act**, held that the claim of the first petitioner is barred by limitation.

4. Against the said order dated 02.12.2013 made in I.A.No.1086 of 2013 in O.S.No.514 of 2005, the present Civil Revision Petition is filed by the petitioners.

5. Heard the learned counsel for the petitioners as well as respondent and perused the materials available on record.

6. From the materials available on record, it is seen that the petitioners have sought to implead the second petitioner / proposed party as second plaintiff in the suit. According to the petitioners, the second petitioner purchased the property vide sale deed dated 30.10.1992 and the first petitioner has filed the suit as owner based on the patta issued in his favour. The second petitioner is the owner of the property based on the sale deed and therefore she is necessary and proper party to the suit. The learned Judge, has not considered Order I Rule 10 CPC and has not given any finding as to whether the second petitioner is necessary and proper party to the

suit. The learned Judge has dismissed the application on the ground that the claim of the petitioners is barred by limitation. The learned Judge has committed an error in not considering the provisions of Order I Rule 10 CPC while deciding the impleading application.

6. In view of the above circumstances, the order of the learned Judge dated 02.12.2013 made in I.A.No.1086 of 2013 in O.S.No.514 of 2005 is liable to be set aside and it is hereby set aside.

7. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

04.12.2017

Speaking/Non-speaking order

Index : Yes/No

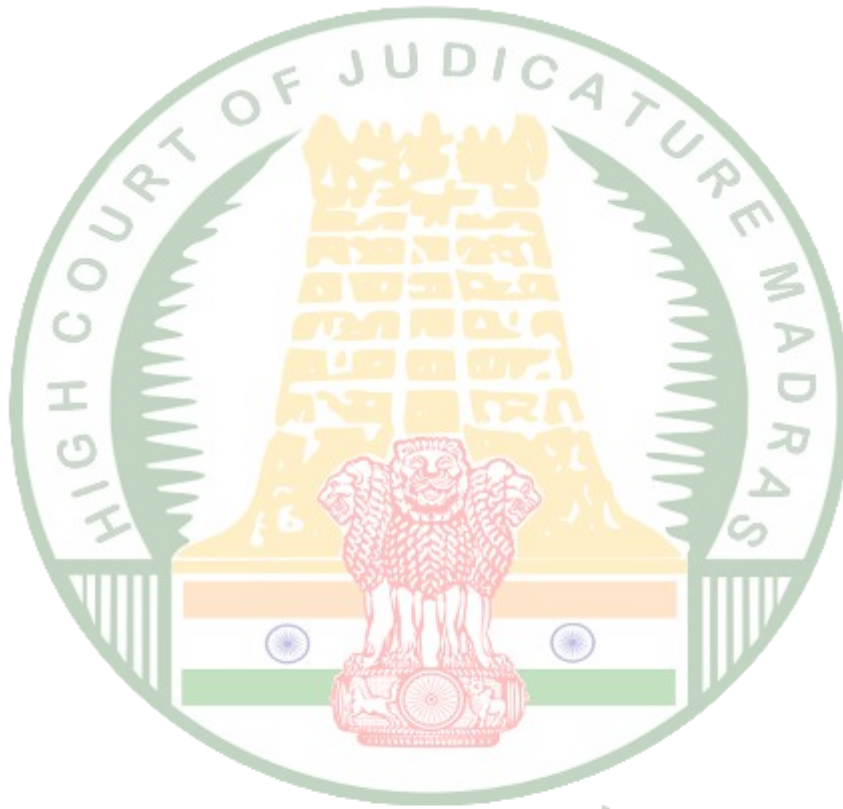
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To

The Additional District Munsif Court,
Tiruchengode.

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V.M.VELUMANI, J.
vv/rgr



सत्यमेव जयते

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