

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.1960 of 2017

and

C.M.P.No.9498 of 2017

IFFCO TOKIO General Insurance Company Ltd,
4th floor, IFFCO Bhavan,
No.128, Habibullah Road,
T. Nagar, Chennai- 600 017

..Petitioner/2nd respondent

Vs.

1. Premalatha
2.Sakthivel
3.Ashok Kumar

.. Respondent

.. Respondent/ 2nd respondent

..Respondent/3rd respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.03.2017 made in I.A. No.1713 of 2016 in M.C.O.P.No.256 of 2013 on the file of the Hon'ble Principal District Judge, Namakkal

For Petitioner : M/s.K.Poomalai

For Respondents:

R1 : Mr.MA.P.Thangavel

R2 & R3 : No appearance

ORDER

The present Civil Revision Petition is filed against the fair and decretal order dated 10.03.2017 made in I.A. No.1713 of 2016 in M.C.O.P.No.256 of 2013 on the file of the Principal District Judge, Namakkal.

2. Revision petitioner is the Insurance Company. According to the revision petitioner, an application to implead the proposed party as third respondent in main MCOP has been filed by him. It is the case of the petitioner that the said proposed party is the owner of the bike bearing Reg. No. TN 47 AZ 3512, who is the wrongdoer and hence, he is necessary party in the claim petition. A counter had been filed by the third respondent stating that his name was wrongly included in the FIR and that he is not a necessary party in the aforesaid MCOP. Considering the rival submissions on either side, the trial Court had dismissed the said application. Hence the petitioner is before this Court.

3. According to the learned counsel for the petitioner, the claim petition has been filed by the first and second respondents against the insurer and the owner of the offending vehicle and not against the wrongdoer and hence, the third respondent is absolutely

passed by the Trial Court is erroneous.

4. Per contra, learned counsel appearing for the first respondent submitted that the claimants have filed the original petition before the tribunal against the petitioner as well as the owner of the bike. According to the learned counsel for the first respondent when an award was passed against the third respondent, the petitioner can very well recover the said amount from the proposed party/third respondent.

5. According to the learned counsel for the petitioner, the proposed party has to be impleaded as third respondent who is a necessary party in M.C.O.P.No.256 of 2013, since the third respondent drove the vehicle bearing Reg. No. TN 47 AZ 3512 in a rash and negligent manner and hit against the second respondent. Though the second respondent applied sudden brake, on seeing the opposite vehicle, due to this impact, the wife of the second respondent fell down and sustained grievous injuries and later died in the hospital. A case has been registered against the proposed party/third respondent in Crime No 1631 of 2012 under sections 279, 337 and 304(A) IPC on 28.10.2012.

6. It is brought to the notice of this Court that the aforesaid criminal case has been taken cognizance in C.C.No. 277 of

2013 and since the witnesses turned hostile, the third respondent was

acquitted vide order dated 28.03.2017 passed by the learned Judicial Magistrate No.I, Namakkal.

7. Whether the accident occurred due to the negligence on the part of the third respondent or not is merely a question of fact which can be gone into during trial. All these disputed facts have to be decided by the tribunal, on the basis of evidence.

8. At this stage, impleading of the proposed party /third respondent will not cause any prejudice to the claimant. In any event, if any liability is fixed on the revision petitioner, the same can be very well recovered from the proposed third respondent. However, the true intent of impleading a third party is to see that the dispute is resolved in the presence of all.

9. At this juncture, it is apposite to refer to Order (I) Rule 10(2) which reads as follows:

O.1.R.10 Suit in name of wrong plaintiff.

"(2) Court may strike out or add parties-- 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 necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added”.

10. The Object of the Order I, Rule 10(2)C.P.C is to implead a third party to the Suit to ensure that the dispute in the Suit would be resolved in the presence of all, in order to avoid multiplicity of proceedings.

11. The Hon'ble Supreme Court in ***Thompson Press (India) Ltd., Vs. Nanak Builders & Investors Ltd., & Others*** reported in **(2013) 5 SCC 397** at paragraphs 29, 30 and 31 has held as follows:

"29. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in Rajender Singh Vs. Santa Singh and Their Lordships with approval of the principles laid down in Jayaram Mudaliar V.Ayyaswami reiterated: (Rajender Singh case, SCC p.711, para 15)

"15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the

court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of *lis pendens* is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.

30. In the light of the settled principles of law on the doctrine of *lis pendens*, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.

31. Order 1 Rule 10 CPC reads as under:

"10. Suit in name of wrong plaintiff-

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as

plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties: 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 necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".

12. **In Devaki Thiyagarajan Vs. Ahamed & Others** reported in **2015 (4) CTC 293**, a Division Bench of this Court at paragraphs 54,62,63,71,71 has held as follows:

54. In so far as the present Appeal is concerned, we would like to place it on record that the Principle of *lis pendens* embodied in Section 52 of the T.P.Act being a Principle of Public Policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking Notice of a title acquired during the pendency of the litigation. The mere pendency of a Suit does not prevent one of the parties from dealing with the property constituting the subject matter of the Suit. The Section only postulates a condition that the

alienation will in no manner affect the rights of the other party under any Decree, which may be passed in the Suit unless the property was alienated with the permission of the Court.

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

63. Under Order 1, Rule 10, C.P.C, a party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the Suit and then he can be impleaded.

71. As aforesaid in the earlier paragraphs, the Respondents 2 to 5/Plaintiffs 1 to 4 have not alienated the Suit property in favour of the Appellant/proposed 5th Plaintiff with the permission of the Court. However, as argued by Mr.R.Thiyagarajan, since the Respondents 2 to 5/Plaintiffs 1 to 4 have allegedly sold the Suit property in favour of the Appellant/proposed 5th plaintiff, they might not show much interest or due diligence in conducting the trial of the Suit. Even if it is presumed that the Appellant/proposed 5th Plaintiff is not included as one of the co-Plaintiffs to prosecute the Suit as against the Respondents 6 to 9, she would definitely approach the Court of law with a new Suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided that the Appellant/proposed

5th Plaintiff could be allowed to be impleaded as the 5th Plaintiff.

71(a). Further, we do not see any collusiveness between the Appellant/proposed 5th Plaintiff and the Respondents 2 to 5/Plaintiffs 1 to 4. Section 52 of T.P.Act is a substantive law, whereas the provisions of Order 1, Rule 10(2) of C.P.C., is a procedural law. Even though the Respondents 2 to 5/Plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present Suit, Order 1, Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as Plaintiff or Defendant upon or without any Application of either party, whose presence appears to be necessary in Order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit.

13. In the light of the law enunciated in the decisions referred supra, I am of the view that the proposed party is absolutely a necessary party to be impleaded as third respondent in the aforesaid claim petition. Hence, the order passed by the learned Principal District Judge, Namakkal in I.A. No.1713 of 2016 is set aside and this Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14. At this stage, both the learned counsel requested to fix

a time limit for the disposal of the Original Petition.

15. In view of the same, the tribunal is directed to dispose of the case within a period of 12 weeks from the date of receipt of a copy of this order.

30.10.2017

Speaking/Non-speaking order

Index : Yes/No

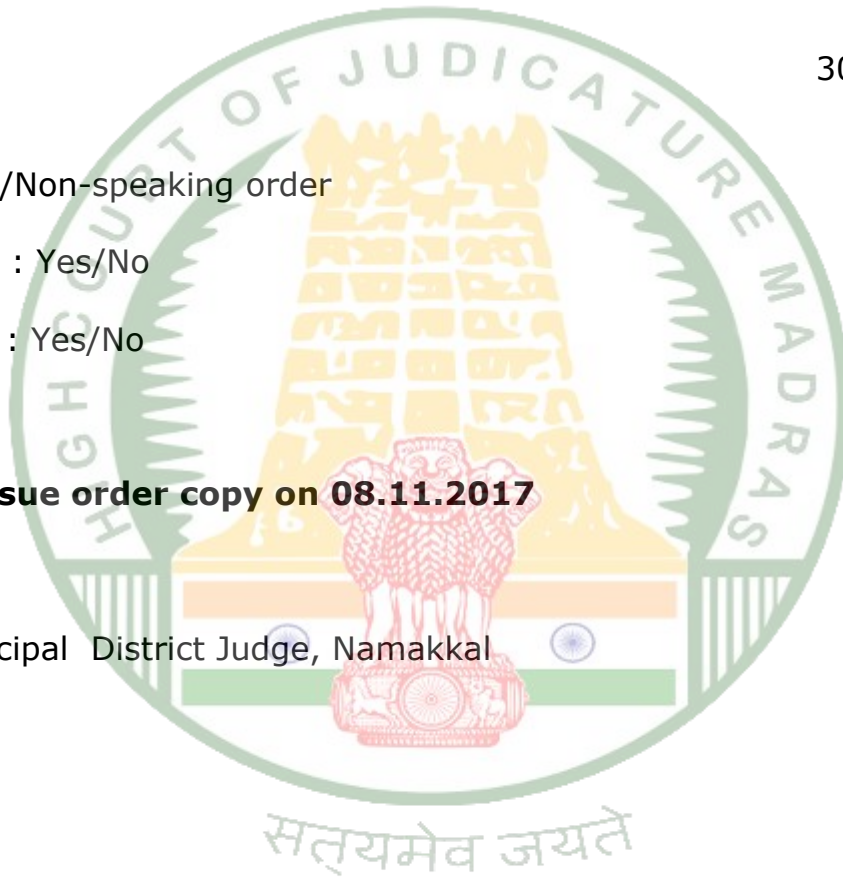
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Note: Issue order copy on 08.11.2017

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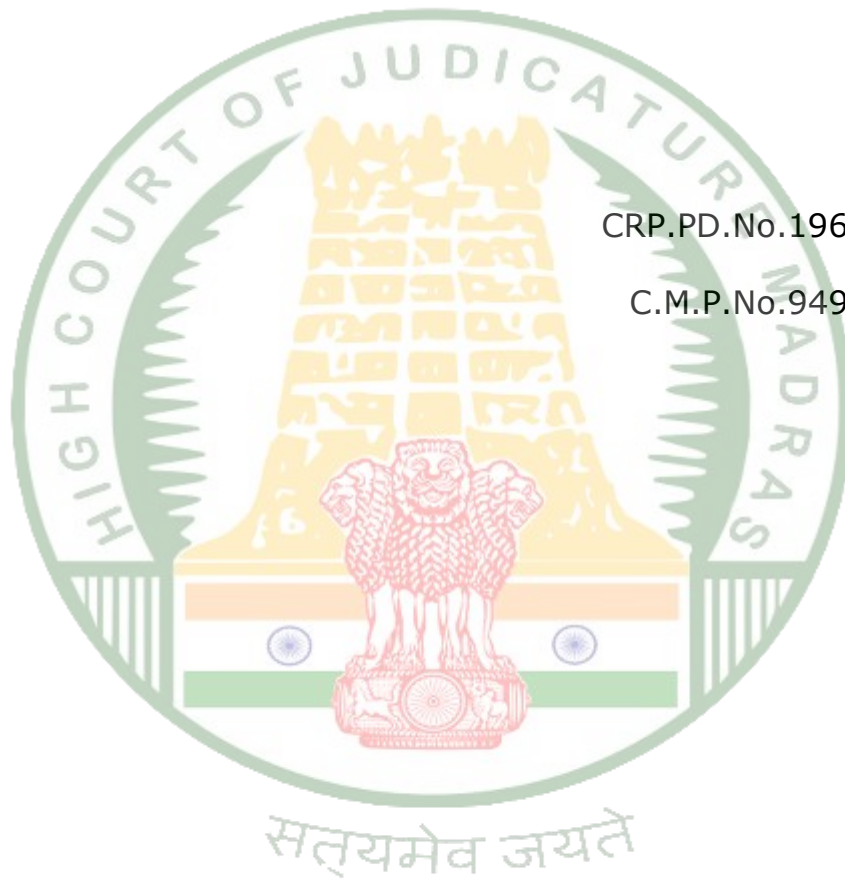
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D.KRISHNAKUMAR. J,

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