

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P (PD) Nos.2510 to 2515, 2603 to 2608, 2972 to 2978,
3149 to 3156, 3251 to 3254 & 3417 to 3425 of 2014
and M.P.Nos.1 of 2014 (40 Nos.)**

Judgment reserved on 08.11.2017	Judgment pronounced on 15.11.2017
--	--

CRP (PD) No.2510 of 2014

1.C.Elumalai
2.E.Senthil Kumar
3.E.Sridhar

Petitioners

Vs

1.A.G.L.Irudayaraj
2.M.Rathinam
3.K.Lakshmi
4.Vasantha
5.Ramachandran
6.Pappathy

Respondents

Prayer in CRP (PD) No.2510 of 2014 : Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 31.01.2014 made in I.A.No.20673 of 2006 in O.S.No.524 of 2005 on the file of I Assistant Judge, City Civil Court, Chennai.

For Petitioners
in all CRPs : Mr.R.Thiagarajan

For R-1 : Mr.P.S.Raman,
in all CRPs Senior Counsel for
M/s.Rajnish Pathiyil

COMMON ORDER

These Civil Revision Petitions are filed against the order and decretal order dated 31.01.2014 made in I.A.Nos.20671, 20672, 20664, 20673, 20647, 20304, 20302, 20309, 20648, 20659, 20667, 20670, 20643, 20668, 20645, 20650, 20300, 20654, 20308, 20301, 20651, 20652, 20661, 20662, 20663 & 20665 of 2006, 883 of 2007, 20305, 20649, 20656, 20657, 20303, 20307, 20646, 20653, 20658, 20660, 20669, 21996 and 21997 of 2006 respectively in O.S.Nos.521 to 525, 240, 251, 241, 526, 291, 516, 529, 518, 515, 517, 530, 250, 286, 249, 239, 531, 532, 293 to 295, 535, 534, 246, 528, 288, 289, 245, 242, 519, 536, 290, 292, 533, 248 & 244 of 2005 on the file of the I Assistant Judge, City Civil Court, Chennai.

2. The petitioners are third parties, first respondent is the plaintiff and the other respondents are defendants in the above suits

on the file of I Asst. Judge, City Civil Court, Chennai. The first respondent filed the above suits for declaration, mandatory injunction directing the other respondents to remove the unauthorised construction and to handover the vacant possession of the suit property to him.

2 (a) The petitioners filed above Interlocutory Applications under Order I Rule 10 (2) CPC to implead them as defendants in the above suit. According to the petitioners, the suit property originally belonged to Sree Durga Blue Metal Quarry consisting of its partners who in turn dealt with the property in favour of G.V Kesavalu Naidu @ Audikesavalu Naidu who became the proprietor of the firm. After the death of G.V Kesavalu Naidu @ Audikesavalu Naidu, his legal heirs namely Mrs.G.K.Gajalaksmi, G.K.Palani and G.K.Santhanam inherited the property. The legal heirs of the deceased G.V Kesavalu Naidu @ Audikesavalu Naidu sold the property in favour of the petitioners by way of three sale deeds dated 05.07.2006 bearing Registered Doc.Nos.1422/2006, 1423/2006 & 1441/2006. The first respondent, without any title to the said suit property is trying to litigate over the suit property belonging to the petitioners and has initiated proceedings against the respondents for declaration of title, mandatory injunction,

to remove unauthorised construction and for recovery of possession. In these circumstances, the petitioners are necessary and proper parties in the present suit for proper adjudication.

2 (b) The petitioners came to know about the above suits filed by the first respondent, when it was brought to their notice in C.S No.597 of 2006 filed by the petitioners in respect of the very same suit property at No.138, Taramani Village, comprised in Survey No.92/3 and immediately the petitioners have filed the present applications for impleading them as parties to the above suits. By impleading the petitioners, no prejudice or hardship or inconvenience would be caused to the respondents. On the other hand, non-impleadment would lead to incomplete and inchoate adjudication which would not meet the ends of justice.

3. The first respondent filed counter and denied all the averments made by the petitioners. The first respondent submitted that the suit property was settled on his vendor K.Ganesh Singh on 25.11.1968 vide Doc.No.4870/1968 and the petitioners purchased the suit property by way of Registered Sale Deed dated 05.11.1975 registered as Doc.No.90 of 1976 for valuable consideration. The

petitioners have not stated as to how G.V.Kesavalu Naidu @ Audikesavalu Naidu became the proprietor of Sree Durga Blue Metal Quarry which was a Partnership Firm. No registered document was executed for transferring the immovable property when the value of property was more than Rs.100/-. The first respondent denied that G.V.Kesavalu Naidu @ Audikesavalu Naidu became owner and after his death, his legalheirs inherited the suit property.

3 (a) The petitioners filed C.S.No.597 of 2006 before this Court for a declaration that the settlement deed dated 25.11.1968 registered as Doc.No.4807 of 1968 as illegal, invalid, nonest in the eye of law and to declare the same as sham and nominal and not binding upon them, to declare the sale deed dated 05.11.1975, registered as Doc.No.90 of 1976 as null and void and for consequential injunction and O.A.Nos.637 & 638 of 2006 for interim injunction. The said O.As were dismissed on 17.11.2006. Against the said order of dismissal, the petitioners filed OSA Nos.336 & 337 of 2006 before this Court. The First Bench of this Court dismissed both the OSAs on 22.11.2006.

3 (b) Against the said order, petitioners filed SLP (Civil) No.19924 of 2006 which was disposed of *in limine* by the Hon'ble

Apex Court on 19.03.2007. Having failed in their attempt, the petitioners have come out with the present Interlocutory Applications for impleading them as defendants in the above suits that the petitioners are not necessary or proper parties to the suits. They do not have any right over the suit property and the matter is between the first respondent who is the plaintiff and the other respondents who are defendants in the above suits. The first respondent who is the plaintiff is *dominus litus* and third parties cannot seek to implead themselves as parties to the above suits. The present Interlocutory Applications are filed only to drag on the proceedings.

4. Before the learned Judge, the petitioners marked Exs.P1 to P8 and the first respondent marked Exs.R1 to R10. The learned Judge, considering the averments in the affidavits, counter affidavits, materials on record, judgment of this Court dated 22.11.2006 made in O.S.A Nos.336 & 337 of 2006 and the judgment relied on by the learned counsel for the first respondent, dismissed the applications filed by the petitioners.

5. Against the said order of dismissal dated 31.01.2014 made in I.A.Nos.20671, 20672, 20664, 20673, 20647, 20304, 20302, 20309,

20648, 20659, 20667, 20670, 20643, 20668, 20645, 20650, 20300, 20654, 20308, 20301, 20651, 20652, 20661, 20662, 20663 & 20665 of 2006, 883 of 2007, 20305, 20649, 20656, 20657, 20303, 20307, 20646, 20653, 20658, 20660, 20669, 21996 and 21997 of 2006 in O.S.Nos.521 to 525, 240, 251, 241, 526, 291, 516, 529, 518, 515, 517, 530, 250, 286, 249, 239, 531, 532, 293 to 295, 535, 534, 246, 528, 288, 289, 245, 242, 519, 536, 290, 292, 533, 248 & 244 of 2005 respectively, the present Civil Revision Petitions are filed by the petitioners.

6. The learned counsel for the petitioners contended that the petitioners are owners of the suit property. They have purchased the property by way of three sale deeds dated 05.07.2006 bearing Registered Doc.Nos.1422/2006, 1423/2006 & 1441/2006 for valuable consideration. They are in possession and enjoyment of the suit property. The petitioners have proved that they have right over the suit property and they are necessary parties to protect their interest in the suit property. The first respondent has filed the above suits without having any title in respect of the property belonging to the petitioners. In these circumstances, the petitioners are necessary and proper parties to the suit filed by the first respondent and without their

presence, the suits cannot be properly and completely decided. The learned Judge failed to consider the scope of Order I Rule 10 CPC and erred in dismissing the applications.

6 (a) The learned counsel appearing for the petitioners submitted that the Hon'ble Apex Court disposed of the SLP with a direction to dispose of the suit within six months and directed the parties not to create any third party right. The first respondent, in violation of the order of the Hon'ble Apex Court, alienated the property. The petitioners filed Contempt Petition No.118 of 2007 before the Hon'ble Apex Court and the Hon'ble Apex Court, by order dated 20.03.2009 imposed exemplary cost of Rs.2 Lakhs on each of the contemnors and in case of non-payment of the said amount, contemnors shall undergo Simple Imprisonment for three months each. Any third party right created after order dated 19.03.2007 in SLP No.19924 of 2006, is of no consequence and stands set aside.

6 (b) The learned counsel for the petitioners, in support of his contention, relied on the judgments reported in **2013 (5) SCC 397 [Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others]**

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 which 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. Order 1 Rule 10 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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.-Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the

new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the [Indian Limitation Act](#), 1877 (15 of 1877), [section 22](#), the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

31. From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is a either necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.

32. Considering the aforesaid provisions, this Court in the case of [Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & Ors.](#) 1992 (2) SCC 524 held as under:

"It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought of relevant arguments to advance. The only reason which make it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his

legal rights. It is difficult to say that the rule contemplates joining as a defendant whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. (1956) 1 All E.R. 273, wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England (1950) 2 All E.R. 611, that the true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights.'

7. Per contra, the learned Senior Counsel for the first respondent contended that the first respondent has purchased the suit property by Registered Sale Deed dated 05.11.1975 bearing Doc.No.90 of 1976. The said property was settled by way of settlement deed dated 25.11.1968 bearing Doc.No.4870 of 1968 on his vendor. The first respondent was carrying on business in the suit property after obtaining necessary permission from the concerned authorities. The petitioners have filed C.S No.597 of 2006 (now transferred to VI Addl. City Civil Court, Chennai and re-numbered as O.S No.12065 of 2010) for a declaration that settlement deed dated 25.11.1968 registered as Doc.No.4870 of 1968 as illegal, invalid, non-est in the eye of law and to declare the same as sham and nominal and not binding upon them, to declare the sale deed dated 05.11.1975 registered as Doc.No.90 of

1976 as null and void and for consequential injunction. In the above said suit, O.A Nos.637 & 638 of 2006 filed by the petitioners for injunction, this Court elaborately considered the issue and rejected the contention of the petitioners with regard to title of G.V.Kesavalu Naidu @ Audikesavalu Naidu and the said Kesavalu Naidu became the sole proprietor of the Partnership Firm. The petitioners claim to be the owner of the suit property only from July 2006 whereas the first respondent has produced the document of title from 05.11.1975. This Court dismissed both the O.A Nos.637 & 638 of 2006. The First Bench of this Court, by order dated 22.11.2006 dismissed the O.S.A Nos.336 & 337 of 2006 confirming the order dated 17.11.2006 made in O.A Nos.637 & 638 of 2006. The SLP filed by the petitioners was disposed on 19.03.2007. In view of the orders passed by this Court in O.A Nos.637 & 638 of 2006, order of the Division Bench in OSA Nos.336 & 337 of 2006 and Hon'ble Apex Court in SLP No.19924 of 2006, the petitioners are not necessary and proper parties to the suits filed by the first respondent.

WEB COPY

7 (a) The learned Senior Counsel appearing for the first respondent, in support of his contention, relied on the following judgments -

(i) MANU/TN/0715/2014 [D. Ananthi v. K. Chandrasekaran]

39. Also that, if an individual can show a fair semblance of title or interest, he can, indeed, file an application for impleadment. A Court of Law can direct impleadment of a third party in an application/suit only in a case where he is a proper or necessary party and otherwise has an interest in the subject matter of any pending proceedings/suit. Mere interest of parties in the fruits of litigation cannot be a real test for they being impleaded as parties. It is to be borne in mind that impleadment of parties under Order 1 Rule 10 of the Civil Procedure Code is not a matter of law but only a matter of fact. A Court of Law whether to allow the impleading application or not is to take into consideration of all relevant attendant facts and circumstances encircling the case. However, for exercise of said power, the Court has to render a finding that the concerned party is a necessary or proper party. Therefore, the addition of parties would hinge upon a judicial discretion which has to be exercised by a Court of Law in a judicious manner, based on facts and circumstances of the case, which float on the surface.

(ii) 2007 (2) CTC 73 [Krishnan, S v. Rathinavel Naicker]

16. A party to a litigation is not entitled to use the provisions of Order I, Rule 10 (2), C.P.C., to implead a person, just for the purpose of eliciting a statement from him, in whatever form, so as to make use of the same as a piece of evidence. As observed by this court in

Somasundaram Chettiyar and others vs- Balasubramanian (1998 (1) C.T.C. 626), a person does not become a necessary party merely because he has some evidence relevant to the case on hand. A necessary witness is different from a necessary party.

17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories:-

- a) If without his presence no effective and complete adjudication could be made;*
- b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;*
- c) If there is a cause of action against him;*
- d) If the relief sought in the suit or other proceedings is likely to be made binding on him;*
- e) If the ultimate outcome of the proceedings is likely affect him adversely;*
- f) If his role is really that of a necessary witness but is sought to be camouflaged as a necessary party;*

If a party to a litigation satisfies the court that the person sought to be impleaded, passes any one or more of the above tests, then he is entitled to get the discretion of the court exercised in his favour. The above tests are not exhaustive and at times, even if a person falls under any one of the above categories, the court may refuse to implead him. To quote an example, a subsequent purchaser of a property, which forms the subject matter of the suit, may satisfy the tests (d) and (e) above mentioned and yet the court may decline to implead him on the basis of the doctrine of lis pendens. Therefore the above list is only a broad statement of the principles that could be culled out from judicial precedents.

(iii) 2011 (256) MLJ 1255 [C.Ramasamy and Ors. v. S.S.Chinnusamy and Ors.]

15. The Court has to weigh the role to be played by the proposed parties who seek to be impleaded in a suit with reference to their rights. If the Court feels that without their presence nothing could be adjudicated, then they are necessary parties and their presence can be decided to be essential. On the other hand, if the Court deems fit that a party whose presence alone is necessary and no relief need to be accorded to the said party, then such party is a proper party and he may be added as a party. If the Court reaches a conclusion that presence of the proposed party is not at all necessary for adjudication of the claims of the parties in the suit, then he is neither a necessary party nor a proper party and there is no need to implead him.

(iv) 2010 (7) SCC 417 [Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.]

8. 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 this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"Court may strike out or add parties.

(2) 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."

The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a

person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

12. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. vs. Invest Import*- 1981 (1) SCC 80, reiterated the classic definition of 'discretion' by Lord Mansfield in *R. vs. Wilkes* - 1770 (98) ER 327, that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, 'but legal and regular'. We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.

(v) 2005 (6) SCC 733 [Kasturi v. Iyyamperumal and Ors.]

5. Let us therefore confine ourselves to the provision of Order 1 Rule 10 sub-rule (2) of CPC which has already been quoted hereinabove. From a bare perusal of sub-rule (2) of Order 1 Rule 10 of the

CPC, we find that power has been conferred on the Court to strike out the name of any party improperly joined whether as plaintiff or defendant and also when the name of any person ought to have been joined as plaintiff or defendant or in a case where a person 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. In the present case, since we are not concerned with striking out the name of any plaintiff or defendant who has been improperly joined in the suit, we will therefore only consider whether the second part of sub-rule(2) Order 1 Rule 10 of the CPC empowers the Court to add a person who ought to have been joined 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.

8. Heard the learned counsel appearing for the petitioners as well as the learned Senior Counsel appearing for first respondent and perused the materials available on record.

9. The contention of the learned counsel appearing for the petitioners is that petitioners have become owners of the property as they have purchased the said suit property by three sale deeds, all dated 05.07.2006 bearing Doc.Nos.1422/2006, 1423/2006 & 1441/2006 from legal heirs of G.V.Kesavalu Naidu @ Audikesavalu Naidu. This issue was considered by a learned Judge of this Court and First Bench of this Court in the application filed by the petitioners in

O.A.Nos.637 & 638 of 2006 and OSA Nos.336 & 337 of 2006. The First Bench of this Court vide order dated 22.11.2006 rejected the contention that G.V.Kesavalu Naidu @ Audikesavalu Naidu became the proprietor of Sree Durga Blue Metal Quarry and also owner of the suit property. The First Bench of this Court, in Para 6 & 7 has held as follows -

6. We have heard the learned counsel appearing on either side at length. We have gone through the relevant records. The case of the appellants is solely based upon the deed dated 15.12.1962 whereby, P.Munilal and his son K.R.Jaswant Sarkar appointed G.V.Kesavalu Naidu as the sole proprietor of the partnership firm. It is also the case of the appellants that by virtue of this deed, G.V.Kesavalu Naidu had become the sole proprietor of the partnership firm and its assets. The so called deed is an unregistered document and it is in the form of a letter, which purports to appoint G.V.Kesavalu Naidu as the sole proprietor of the company and authorise him to sign all the documents on behalf of the company and in the event of he succeeding in receiving the compensation or in repossessing the property, he can dispose of the same on his own including the machineries, movables and immovables. The learned counsel for the appellants is unable to explain as to how this document would convey the ownership of the partnership firm and its assets to G.V.Kesavalu Naidu from whose successors the appellants have purchased this property. The genuineness of this document is seriously disputed by the third respondent. The document has not seen the light of the day for more than 40 years. Learned counsel for the appellants sought to rely upon certain receipts towards payment of urban land tax to establish the appellants' possession over the property. It is, however, seen from the records that

the appellants have paid urban land tax for the consolidated period from fasli 1382 to 1415 i.e., for a period of 42 years, for which, there is a receipt dated 29.05.2006. The appellants are claiming to be the owner of the suit schedule property only from July 2006 whereas, the third respondent has been holding the document of title for the said property from 05.11.1975. The third respondent has produced the original power of Attorney dated 11.06.1968 executed by P.M.R.Sarkar in favour of an Advocate by name Mr.Doraisamy, a partner in M/s.King & Patridge. The Power of Attorney was duly executed and attested before the Consulate General of India at Germany. Pursuant to this Power of Attorney, a deed of settlement was executed in favour of the second respondent, who is none else than the nephew of P.Munilal and under this document, the property has been settled upon the second respondent. The deed of settlement is registered as the Document No.4827 of 1968 on 25.11.1968. The sale deed executed by the second respondent in favour of the third respondent is also a registered document.

7. The third respondent has also produced the proceedings of the Collector of Chengalpattu dated 25.08.1978 granting permission to run the quarry. G.O.Ms.No.2065 dated 30.12.1987 issued by the Government granting exemption under the Tamil Nadu Urban Land Ceiling Act and the Government Order dated 08.02.1991 extending the exemption and enabling the third respondent to utilize the exempted land for the purpose of industry. The third respondent has also produced the notice dated 03.03.1982 issued by the Assistant Commissioner, Urban Land Tax, under Section 11(1) read with Section 7-B and 4-C-A of the Tamil Nadu Urban Land Tax Act, 1966 in Form 4-B. In the said notice, the name of the third respondent, the survey number of the suit schedule property, the total extent of land and the place in which it is situated, are clearly mentioned. The description of the property mentioned in the notice date 03.03.1982 exactly tallies with the suit schedule property. The final order dated 11.04.1983 passed by the Assistant

Commissioner, Urban Land Tax fixing Rs.1,500/- as the market value of the land is also placed on record. It is also seen from the records that the Collector of Chengalpattu, by his proceedings dated 25.08.1978, has granted permission to the third respondent to quarry in his patta land and by the said proceedings, the Thasildar, Saidapet, is requested to watch the movement of blue metal jelly and ensure that only the quantity permitted is removed. These voluminous records produced by the third respondent do prima facie establish the possession of the third respondent of the suit schedule property. The very prayer of the appellants is to declare the sale deed dated 05.11.1975 as invalid. Until the said sale deed dated 05.11.1975 is declared as invalid, the same must be deemed to be a valid document for all purposes. In such circumstances of the case, the learned Single Judge has rightly held that the plaintiffs have not made out any case for grant of interim injunction. Consequently, both the O.S.As are dismissed.

10. From the judgments relied on by the learned counsel for the petitioners as well as the learned Senior Counsel for the first respondent and Order I Rule 10 CPC, the following principles emerge for consideration.

(a) The Court has power to strike out or implead any party as plaintiff or as defendant, at any stage of the suit.

(b) The party must be a necessary or proper party to the suit. A necessary or proper party is one without whose presence, the issues in the suit cannot be effectively and completely decided.

(c) A party may have same interest in the issues in the

suit but in the facts of the case he may not be necessary or proper party.

(d) A party may be a necessary witness but he may not be necessary or proper party.

11 (a) The First Bench of this Court has elaborately considered the documents by which G.V.Kesavalu Naidu @ Audikesavalu Naidu claims to be the sole proprietor of Sree Durga Blue Metal Quarry and also took note of the fact that the said letter came to light only after 40 years from the date when it was written and has not accepted the same. This Court, considered the sale deed dated 05.11.1975 by which the first respondent is claiming to have acquired title and various documents produced by the first respondent with regard to his possession and business being carried on in the suit property. The injunction sought for by the petitioners based on ownership of G.V.Kesavalu Naidu @ Audikesavalu Naidu was rejected by this court as well as Hon'ble Apex Court. The petitioners have filed the said suit for declaration that the sale deed executed in favour of the first respondent dated 05.11.1975 and settlement deed dated 25.11.1968 bearing Doc.No.4870 of 1968 executed in favour of the vendor of the first respondent are null and void. Unless the petitioners succeed in

the suit in C.S.No.597 of 2006 (now transferred as O.S.No.12065 of 2010 on the file of VI Asst. Judge, City Civil Court, Chennai) filed by them and decree is passed in their favour, they cannot rely on the said three sale deeds claiming to be the owners of the property.

11 (b) In the suits filed by the first respondent, the petitioners are neither necessary nor proper parties. The first respondent is claiming title to suit properties and in the said suits, the claim of title of petitioners cannot be decided. Whether a party is a necessary or proper party to the suit is a question of fact. The court has to consider all the facts and circumstances and must come to a conclusion whether a party is a necessary or proper party. A person will be a necessary or proper party only when without his presence, the issues in the suit cannot be decided completely and effectively. In the facts and circumstances of the present case, the petitioners are not necessary or proper parties, as their presence is not necessary to decide the issue in the suits effectively and completely. The Contempt proceedings before the Hon'ble Apex Court and imposition of exemplary cost on the contemnor has no relevance to decide the issue whether the petitioners are necessary and proper parties in the above suits filed by first respondent in the year 2005 against other

respondents.

11 (c) The judgments relied on by the learned Senior Counsel for the first respondent are squarely applicable to the facts of the present case.

11 (d) The learned Judge has elaborately considered the provisions of Order I Rule 10 CPC with regard to proper and necessary party and the judgment relied on by the learned counsel for the respondents and dismissed the applications holding that the petitioners are not necessary and proper parties to the suits. The learned Judge has given cogent and valid reasons for dismissing the applications. In the above said circumstances, there is no reason to interfere with the order impugned in these revisions.

12. In the result, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

15.11.2017

Index: Yes/No
rgr

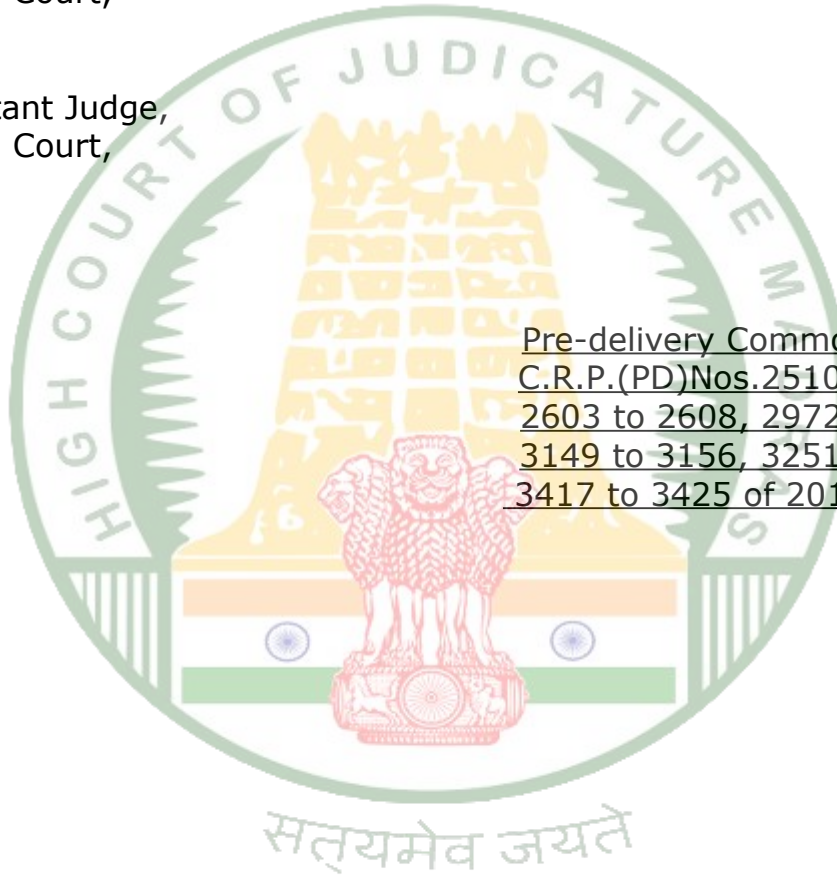
V.M.VELUMANI, J.

rgr

To

1. I Assistant Judge,
City Civil Court,
Chennai.

2. Assistant Judge,
City Civil Court,
Chennai.



Pre-delivery Common Order in
C.R.P.(PD)Nos.2510 to 2515,
2603 to 2608, 2972 to 2978,
3149 to 3156, 3251 to 3254 &
3417 to 3425 of 2014

WEB COPY 15.11.2017