

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

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

CRP.PD.Nos.257&258 of 2017

&

CMP Nos.1132 & 1133 of 2017

Sri Parani Agencies,
A registered firm,
Rep. By its Partner M.Nataraj
15, Velampalayam Village,
Annuppurpalayam,
Tiruppur.

..Petitioner in both CRP's

Vs.

1. D.Sudha
2. M/s.Indian Oil Corporation,
Coimbatore,
Rep. by its Chief Divisional
Retail Sales Manager,
Regional Office, Avinashi,
Coimbatore.

.. Respondents in both CRP's

PRAYER in CRP No. 257 of 2017:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 04.11.2016 passed in I.A.No.166 of 2013 in I.A.No.567 of 2013 in O.S.No.239 of 2013 on the file of the Principal Subordinate Court, Tiruppur.

PRAYER in CRP No. 258 of 2017:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 04.11.2016 passed in I.A.No.167 of 2013 in O.S.No.239 of 2013 on the file of the Principal Subordinate Court, Tiruppur.

For petitioners : Mr.K.Govi Ganesan

For Respondents : Mr. P.Ravi, for R1

Mr.V.Anantha Natarajan, for R2

COMMON ORDER

The petitioner company has filed a suit in O.S.No. 239 of 2013 for declaration against the second respondent. The second respondent filed a written statement in the above said suit. The first respondent has filed applications in I.A.Nos.166 of 2013 and 167 of 2013 in I.A.No.567 of 2013, to implead the first respondent as second defendant in the above said suit in I.A.No.567 of 2013.

2. The learned counsel for the petitioner submitted that the Revision Petitioner has filed the suit for declaration. In the aforesaid suit, the first respondent/third party has filed an application to implead her as party. According to the petitioner, the

plaintiff is the "Dominus Litis" and he alone is entitled to seek the relief he wants and to choose the defendants and the first respondent herein cannot compel the petitioner to file the suit against her. According to the petitioner, the earlier suit in O.S.No.396 of 1996 filed by Natraj and Thyagarajan against the first respondent herein, was decreed on 15.11.1996 and the first respondent was injuncted from interfering with the business of the petitioner and without considering this aspect, the Court below has erroneously allowed the IAs. Hence, the impugned orders of the Court below are liable to be set-aside.

3. The learned counsel for the first respondent submitted that the first respondent has filed the present application to implead her as a party to the suit. The first respondent is also necessary party in the above said suit. The objection of the revision petitioner can be raised at the time of trial in the suit, as the present application is only for impleading the first respondent. Hence, the Civil Revision Petition is liable to be dismissed.

4. The learned counsel for the second respondent submitted that dealership allotment was granted to the revision petitioner. Thereafter, dealership allotment was granted to the first

respondent based on the proposal for the partnership. Hence, there is a dispute between the Revision Petitioner and the first respondent. Since the dealership has been granted to the first respondent, the first respondent is also necessary party in the suit.

5. Heard both sides and considered the materials available on record.

6. By the impugned order, the first respondent has been impleaded as a party in the said suit. According to the first respondent, after dealership was given to the first respondent, the dispute arose between the Revision petition and the first respondent, resulting in filing of the civil suit. The contentions of the petitioner have to be considered at the time of the trial. Hence, the first respondent is also a necessary party. In this regard, it is useful to extract Order 1, Rule 10(2) of the Civil Procedure Code, which reads as follows:

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Order 1
Parties to Suits

"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"

7. The learned counsel for the first respondent relied on a decision of this Court in the case of *M.P.Venkatachalam and another Vs. Govindan and 2 others* reported in 2010 (4) CTC page 322 (at paragraph 10) and the relevant portion of the same reads as follows:

"10. Order 1, Rule 10(2), C.P.C., has given wide power to the Court to join any party to a proceedings either upon or without an Application, to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. For impleadment of a proper and necessary party, the theory that the Plaintiff is the dominus litis is not always an absolute rule and the Court is required to exercise its discretion and decide as to whether in the absence of such parties whether, the Court would be

in a position to effectively and completely adjudicate and settle all the questions, which are involved in the Suit, Therefore, while considering an Application under Order 1, Rule 10(2), C.P.C., the Court ought not to over stretch the Theory of dominus litis. As seen from the facts of the present case, there is a serious dispute as regards an extent of land conveyed to the Plaintiff as well as what has been purchased by the First Defendant. The Plaintiff himself in the Plaint has raised as specific plea that the First Defendant predecessor in title has conveyed more than what she is entitled to. Per contra, the Defendants in their Written Statement would contend that the sale deed executed in favour of the Plaintiff dated 29.01.1971 itself is a forged and fabricated document. Therefore, unless the right, title and interest of the predecessors in title to the Plaintiff and the First Defendant is gone into a complete adjudication of the question involved in the present suit cannot be decided.”

It is also useful to refer a decision of the Supreme Court in the case of **Thompson Press (India) Ltd., Vs. Nanak Builders & Investors Ltd., & Others** reported in **(2013) 5 SCC 397** where in paragraphs 30 and 31, it had been held as follows:

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.

7. In view of the above facts and circumstances of the case and the decisions cited supra, the impugned orders passed by the Court below are confirmed and there is no error or illegality in the order passed by the Court below. Hence, the Civil Revision Petitions fail and accordingly, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

13.11.2017

Speaking/Non-speaking order
Index : Yes/No
Internet: Yes/No
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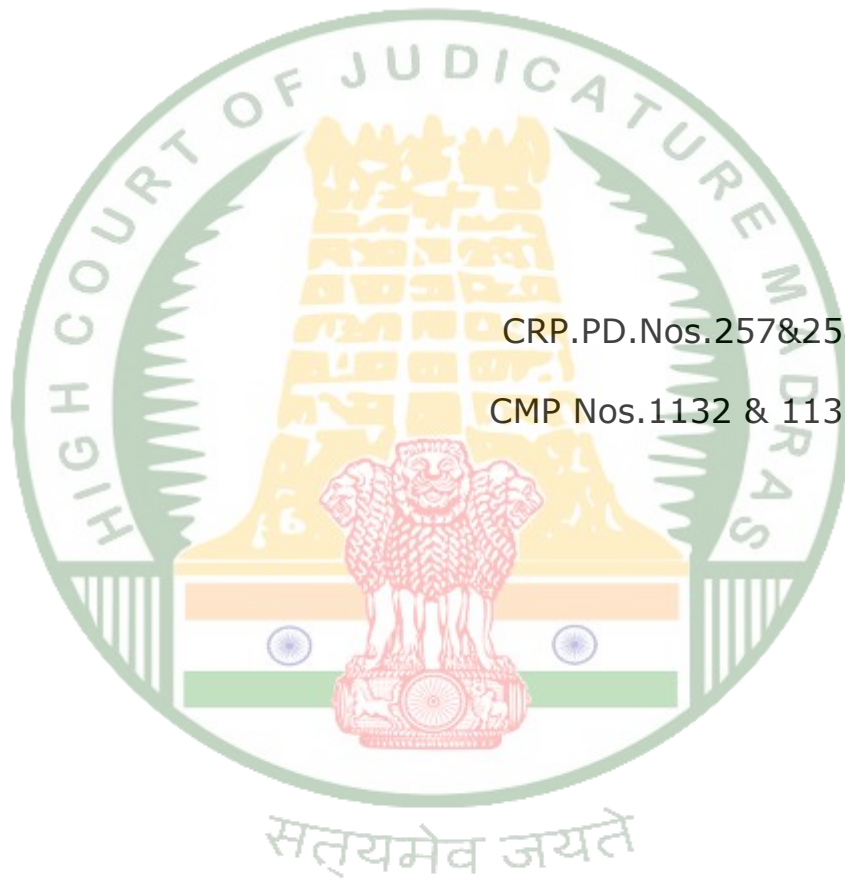
To

The Principal Subordinate Judge,
Tiruppur.

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D.KRISHNAKUMAR. J,

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