

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P. (PD) Nos.29 & 30 of 2014 &
M.P.No.1 of 2014

Raju .. Petitioner in both CRPs.

-VS-

1.C.Duraisamy

2.M.Thangamuthu .. Respondents in both CRPs.

Common Prayer :- Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.10.2013 made in I.A.Nos.350 & 351 of 2013 in O.S.No.327 of 2011, on the file of the II Additional District Munsif Court, Erode.

For Petitioner : Mr.N.Manokaran
(in both CRPs.)

For Respondents : Mrs.V.Srimathi - R1
(in both CRPs.)

No appearance for R2

COMMON ORDER

These Revision Petitions have been filed challenging the fair and decretal orders passed in I.A.Nos.350 & 351 of 2013 in O.S.No.327 of 2011, dated 25.10.2013.

2.The short facts relevant for deciding these Civil Revision Petitions are that the Revision Petitioner in both the Revision Petitions is the third party to the Suit filed by the first respondent in O.S.No.327 of 2011, for declaration, permanent injunction and mandatory injunction. The Suit was originally instituted against the second respondent and during the pendency of the Suit, the Revision Petitioner Mr.Raju, filed I.A.No. 350 of 2013, to permit him to represent himself on behalf of the residents of Iyyar Thottam, Ashokapuram, Veerappanchatram Village, Erode Taluk and also filed I.A.No.351 of 2013, to implead him on his behalf and on behalf of the residents of Iyyar Thottam, Ashokapuram, Veerappanchatram Village, Erode Taluk, as defendant in the Suit.

3.The learned counsel appearing for the petitioner contended that the relief sought for in the Plaint, more specifically, in para XII(c), is for directing the defendant by means of a mandatory

injunction to remove the temple that he has put up in the B schedule properties and to restore the same to its original condition, within a time to be fixed by this Court and on the failure of the defendant to do so, requested the Court to do the same through an Officer of the Court, at the cost of the defendant.

4. Even in the written statement, the defendant in the Suit has stated in paragraph No.7 that the Temple is an age old one, in existence for more than five decades and further the people around the Temple are worshiping. In paragraph No.10 of the written statement also, it was stated that the Temple is in existence for more than five decades, it belonged to the residents of Iyyar Thottam, Ashokapuram, Veerappanchatram Village, Erode Taluk, more than fifty families are residing in and around the Temple and they are also contributing for the maintenance of the Temple. Therefore, it is necessary for the Revision Petitioner to seek impleadment in the Suit, since the very relief sought for in the Plaint is for removal of the said Temple itself.

5. The learned counsel appearing for the respondents opposed the contentions of the learned counsel appearing for the

petitioner by stating that the Application for Impleadment has been filed at the instigation of the defendant and there is no genuinty in filing the said Application and the Revision Petitioner is a third party and unconnected with the Suit scheduled property. It is further contended by the learned counsel that the Temple is a private Temple and the allegations set out in the Petition filed by the Revision Petitioner are incorrect. Since the Revision Petitioner is a third party and the Suit was instituted between the private parties, he has unnecessarily filed those two Interlocutory Applications, for the aforesaid reliefs.

6.Considering the submissions made by the learned counsel appearing on either side, this Court is of the opinion that the very relief sought for in the Plaint requires an attention, since it relates to a Temple which is being worshiped by the people residing in and around the locality. Consequently, there is a specific averment in the written statement that even prior to the filing of the Interlocutory Applications by the Revision Petitioner, the Temple was in existence for more than five decades and the people in and around are worshiping the Temple. Further, the people residing in and around are and contributing for the maintenance of the Temple.

7. When there are specific averments in the written statement and the same was disputed by the other side, the usual course is to put the Suit for trial and find out the truth. It is for the respective parties to mark their documents and adduce oral evidences to establish their respective contentions during the trial. But, at the time of impleading a person, the Court has to find out the *prima facie* material for impleading a person in the Suit.

8. In the case on hand, there is an allegation and counter allegation. Such being the case, the impleadment of the Revision Petitioner in the Suit become necessary and that apart, the relief sought for in the Plaint is for removal of the Temple, which is being worshiped by the people residing in and around that locality.

9. The learned counsel appearing for the petitioner to support his argument cited the Judgment of this Court in *KANGAYAM TALUK, VELLAKOVIL VILLAGE, UPPUPALAYAM VILLAGE PUBLIC. REP. BY C.D.DHANDAPANI & ORS v. KANGAYAM TALUK, VELLAKOVIL VILLAGE, UPPUPALAYAM MUDALIAR COMMUNITY WEAVERS REP. BY M.RANGASAMY & ORS [2007-4-L.W.637]*. For better appreciation, paragraph Nos.3 & 6 are quoted herein below:

“ 3. A perusal of the relief prayed for in the suit shows that the plaintiffs have not

prayed for a declaratory decree; it is for a permanent injunction against the defendants therein and also for a mandatory injunction for removal of "ABCD" fence. In the affidavit filed in support of the applications in I.A.Nos.412 and 413 of 2004, the third parties have specifically stated that all of them belong to Uppupalayam, Vellakovil Village and they filed the said application on behalf of the entire villagers of Uppupalayam. It is further stated that they came to know that the plaintiffs have filed the said suit in respect of a Pavadi. It is their claim that inasmuch as the said place-Pavadi is a common property being used by all the villagers, if any dispute/claim regarding the same has to be decided by hearing all the parties, including the villagers of Uppupalayam.

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6. A reading of the above provisions viz., Order 1, Rules 8, 8-A of C.P.C. and Rule 13 and the Form of the Civil Rules of Practice, clearly show that public notice should disclose full details of the suit viz., nature of the suit as well as the relief/claim made therein to those who are impleaded as parties to the suit, either to support the case or to defend it. Though there is no need to decide the compliance of the said provisions in this revision, as rightly pointed out, in view of the claim of the proposed parties in respect of the subject matter of the property, I am of the view that their presence in the suit would ultimately help the residents of the Uppupalayam village. These materials have not been considered by the learned District Munsif, Kangayam and therefore, I am inclined to accept the claim of the petitioner. Taking note of the fact that the property in question viz., Pavadi is in existence and is being used by all the villagers, only by participating in the suit, it would be possible for them to highlight their stand. However, it is needless to mention that it is for them to substantiate their plea/defence at the time of trial."

10.This Court considered the similar situation in the above case and found that the Application for Impleadment and the Application filed under Order 1 Rule 8 and section 151 of C.P.C., has to be considered based on the genuinity of the averments and the counter averments, established by the respective parties during the time of adjudication of the main Suit.

11.The trial Court in this case had gone into the merits and demerits of the suit and rejected the Application filed by the Revision Petitioner, seeking impleadment and the Application filed under Order 1 Rule 8 of C.P.C. At the stage of considering the

Interlocutory Application filed seeking for impleadment, the trial Court need not have gone into the merits and demerits of the Suit, which has to be established by the respective parties by adducing oral and documentary evidence at the time of trial. Hence, the orders passed by the trial Court, rejecting the Interlocutory Applications call for interference and this Court is inclined to accept grounds raised by the Revision Petitioner.

12. Accordingly, the fair and decreetal orders passed in I.A.Nos.350 & 351 of 2013 in O.S.No.327 of 2011, dated 24.10.2013, are set aside and the Civil Revision Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2017

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S.M.SUBRAMANIAM, J.,

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To

1. The learned II Additional District Munsif Court,
Erode.

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30 of 2014**

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