IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.3134 of 2017
and
C.M.P. No.14720 of 2017

K.Dayalan .. Petitioner

Vs

1.D.Selvan
2.Muniyammal
3.N.Badrinath Rao
4.Suryakala
5.Subashini
6.Barathi
7.The Tahsildar
Arcot Taluk Office,
Arcot Town & Taluk
Vellore District.
8.The Revenue Divisional Officer,
R.D.O.Office, Ranipet,
Vellore District. .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.08.2016 made in I.A.No.265 of 2014 in O.S.No.296 of 2013 on the file of the Subordinate Court. Ranipet.

For Petitioner : Mr.C.K.M.Appaji

For Respondents 2 to 8 : Mr.P.Bagyalakshmi

For R1, R2, R4 & R5 : No appearance

O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 22.08.2016 passed in I.A.No.265 of 2014 in O.S.No.296 of 2013 on the file of the Subordinate Court, Ranipet.

2. The petitioner herein is the plaintiff in O.S.No.296 of 2013 on the file of the Subordinate Court, Ranipet, filed the suit for declaration and permanent injunction. In the said suit, the first respondent herein filed I.A.No.265 of 2014 in O.S.No.296 of 2013 to implead him as the 6th defendant and the revenue officials as the 7 and 8 defendants in O.S.No.296 of 2013. The above said Interlocutory Application was allowed.

3. In the said application of impleadment, counter statement has been filed by the petitioner contending that the lands comprised in S.No.162/5A belongs to the first respondent and despite the same, they are litigating themselves, taking advantage of the wrong entries in the revenue records. Since, there is no cause of action against the respondents objected for allowing the application.

4. The trial Court, after considering the contentions of both the parties allowed the impleading petition on the ground that the plaintiff is attempting to grab the 1st respondent's property which is comprised in S.No.162/5A under the guise of claiming title over the property from his vendors, considering it necessary to implead the first respondent and the official respondents as defendants in the said suit. Challenging the aforesaid order, the present civil revision petition has been filed before this court.

5. According to the learned counsel for the petitioner, the first respondent has filed the instant application to implead himself as a party and also to implead the officials of the revenue department as proposed defendant in the said suit. The first respondent is not necessary to be impleaded as a party, for any relief. The first respondent has filed a separate suit for claiming right over the suit property. Therefore the court below has erroneously allowed the application.

6. The learned counsel for the respondents would submit that the revenue officials have made a mistake while making sub divisions of the second item of the suit property and thereafter, based on the complaint to the revenue officials they conducted enquiry and passed an order on 28.12.2007 by confirming the title deed of the first respondent. The interest of the first

respondent to effect the same could not be compensated at a later stage. Therefore, the Court below has rightly allowed the said application and pleaded not to interfere with the order.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The fact remains that the revision petitioner filed the suit in O.S.No.296 of 2013 seeking declaration and permanent injunction against the respondents 2 to 6 in the aforesaid suit. There is no claim or there is no cause of action against the first respondent/third party. The case of the first respondent is that a mistake has crept in, in the revenue records, while making sub division of the second item of the suit property and based on the complaint, enquiry was conducted and the revenue officials had passed an order dated 28.12.2007. In the light of the order passed by the revenue officials, the first respondent and revenue officials are also necessary parties in the said suit. The suit has been filed by the revision petitioner for the aforesaid relief.

9. It is the submission of the learned counsel for the first respondent that the right over the second item of the suit property and change of revenue

records by officials confirming the title of the first respondent, can be decided at the time of the trial, in the suit. Therefore, the first respondent/third party is also necessary party in the said suit.

10. ***In Devaki Thiyagarajan Vs. Ahamed & Others*** reported in ***2015 (4) CTC 293****, the 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.*
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> *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 aforestated 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.

11. The Object of Order 1, Rule 10(2) C.P.C, is to adjudicate the dispute in the suit, in the presence of all the parties concerned in order to avoid multiplicity of proceedings. The first respondent is necessary party, so as to enable the Court to determine the issues involved in the said suit in the presence of all parties. It is not necessary to implead the revenue officials viz., respondents 7 & 8 herein in the suit, as the first respondent to mark necessary document obtained from the revenue department, if necessary, parties concerned to take steps to examine the officials in the suit. Therefore, the proposed respondents are not necessary parties in the suit. Hence, the order of the Court below is liable to be set aside insofar impleading respondents 7 & 8 are concerned.

D.KRISHNAKUMAR,J.

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12. Considering the facts and circumstances of the case and the order passed by the Court below, impleading revenue officials viz., respondents 7 & 8 are set aside and the other portions of the order passed by the Court below in I.A.No.265 of 2014 in O.S.No.296 of 2013 are confirmed.

13. Accordingly, this civil revision petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.12.2017

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order

Note : Issue Order copy on 22.12.2017

To
The Sub Court,

Ranipet.

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