

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 04.07.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.1734 of 2011  
and  
M.P.No.1 of 2011**

1.Kamalesan  
2.R.Subash Mahendran .. Petitioners

**Vs.**

1.R.Pushpagaran  
2.Arun  
3.Elango  
4.Nazeer  
5.Jiyavudeen  
6.Shabeer  
7.Khadar Ali

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order in I.A.No.184 of 2010 in O.S.No.39 of 2009, dated 28.02.2011, on the file of the Principal District Court at Dharmapuri.

For Petitioners : Mr.P.Valliappan  
For Respondents : Mr.S.Subramanian

### **ORDER**

The plaintiff has filed the present suit in O.S.No.39 of 2009 before the learned Principal District Court, Dharmapuri, for partition of the suit schedule of property.

2.The respondents/defendants 1 and 2 were filed objections.

3.While pendency of the suit and prayed for dismissal of the suit against the defendants 1 to 5.

4.The 3<sup>rd</sup> defendant in the suit in O.S.No.39 of 2009 has filed the Interlocutory Application in I.A.No.184 of 2010 with a prayer to implead the proposed parties 1 to 6 as defendants 6 to 11 in the suit.

It is the case of the 3<sup>rd</sup> defendant is that the respondents 1 and 2/the plaintiffs 1 and 2 for wantonly suppressed the income of the joint family made by way of rents from the letting out the shop in the Item No.2 of the suit property. The Item No.5 of the suit schedule of property has also been let out on the monthly rents by the respondents/plaintiffs and the rental income of the joint family has

also been deliberately concealed by the respondents/plaintiffs with ulterior motive.

5.The 3<sup>rd</sup> defendant also states that the defendants all these item Nos.2 and 5 of the suit properties are proper necessary parties to the suit and for disposal of the suit fairly and finally in the absence of tenants will not be proper. Therefore, he prayed the learned Principal District Judge, to implead the proposed parties.

6.Denying the petitions filed by the 3<sup>rd</sup> defendant, the plaintiffs who are the petitioners herein are filed a counter affidavit saying that since the suit filed for partition and proposed parties are alleged tenant, they have no share over the suit schedule of property and they are not the necessary parties to the suit. Since the petitioners/ plaintiffs also states that the 3<sup>rd</sup> party cannot be impleaded in the suit for partition and prayed the learned Principal District Court, Dharmapuri to dismiss the petition.

7.Considering the case of the 3<sup>rd</sup> defendant and plaintiffs, the learned Principal District Judge, Dharmapuri was allowed the I.A.No.184 of 2010 in O.S.No.39 of 2009, dated 28.02.2011, on the

ground that the proposed parties are occupied the buildings as a tenant and the plaintiffs have suppressed the rent income which was derived from the suit scheduled Item Nos.2 and 5 of the suit schedule of properties. The learned Judge also states that the rental income of the joint family also been deliberately concealed by the plaintiffs. Therefore, accepting the request made by the 3<sup>rd</sup> defendant and decided that the proposed parties are proper and necessary parties to adjudicate the suit as fairly and finally. If the proposed parties are not impleaded as a defendants in the suit, the 3<sup>rd</sup> defendant is unable to established his case in the suit and allowed the applications. Challenging the said order, the petitioners, who are the plaintiffs in the suit filed the present civil revision petition before this Court.

8.I heard Mr.P.Valliappan, learned counsel appearing for the petitioners and Mr.S.Subramanian, learned counsel appearing for the respondents and perused all the materials available on record.

9.It is the case of the petitioners/plaintiffs is that the suit filed for partition and prayer in the suit are as follows:

(a)dividing the properties fully described here under in the schedule A & B in to seven equal shares by metes and bounds by taking into consideration of good

and bad and allotting each one share (two shares) to the Plaintiffs;

(b)delivering separate possession of such shares allotted to the plaintiffs;

(c)granting injunction restraining the defendants from creating any kind of encumbrances over the suit properties till the partition is completed;”

10.Admittedly, the suit filed only for the partition and the partition suit filed only between the legal heirs of the original suit schedule property and no third party can be implead in the suit.

11.Pending suit, the 3<sup>rd</sup> defendant has filed the present application under Order 1 Rule 10 of CPC to implead the tenants as defendants in the suit. The learned Principal District Judge, Dharmapuri, has miserably failed to follow the guidelines given by the Hon’ble Supreme Court and in various High Courts for invoking Order 1, Rule 10(2) of CPC are as follows:

“(i) The plaintiff may choose to implead only those persons as defendants as against whom he wishes to proceed with. However, it is open for the Court to add, at any stage of the suit, a necessary party in order to enable

the Court to effectually and completely adjudicate upon the questions involved in the suit.

(ii) A necessary party is one without whom no order can be effectively made. A proper party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. Addition of the parties would depend upon the judicial discretion which has to be exercised, in view of the facts and circumstances of a particular case.

(iii) The person to be added as one of the parties 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, but it should make him as necessary witness.

(iv) The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

(v) The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1, Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party.

(vi) Normally, the Court should not add a person as defendant when the plaintiff is already available to project his case. The reason is that the plaintiff is the 'dominus litis'. He is the best judge of his own interest and it should be left to him to choose his opponent from whom he wants relief. If he seeks relief against a particular person, it is not the look out of the Court to see whether the relief should be claimed against the other persons, nor is it a duty of the Court to investigate whether the necessary parties have been added or left out.

(vii) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(viii) Persons whose interests would be affected by the litigation are entitled to come on record to protect their interests when those are jeopardised by the persons already on record."

12. When the suit was filed against the defendants and the suit has not been filed against the proposed parties, who are the tenants and no relief sought for by the plaintiffs against the proposed parties. Then, the Court would apply his mind and gone into that to reject the petition, but in the present case, how the learned Judge has come to conclusion that when there is no relief sought for against the proposed parties, admittedly, who are the tenants of the suit schedule of property has ordered to implead them as parties/defendants.

13. Time and again, this Court and the Hon'ble Apex Court has

categorically held that when there is no relief sought for against the parties, no 3<sup>rd</sup> parties could be impleaded in the suit. For supporting the petitioners case, the learned counsel for the petitioner has produced the following judgments:

1.**B.Somaiah and another v. Smt.Amina Begum** reported in **AIR 1976 Andhra Pradesh 182.**

2.**Kaka Singh v. Rohi Singh and others** reported in **AIR 1978 Punjab and Haryana 30.**

3.**S.Ramaswamy and four others v. The State of Tamil Nadu rep. by its Collector, Kanyakumari District at Nagercoil and another** reported in **1999 (III) CTC 335.**

4.**Antony Deveraj and another v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church, rep. by the Trustee and others** reported in **2004 (2) CTC 183.**

5.**S.Krishnan v. Rathinavel Naicker and 22 others** reported in **2007 (2) CTC 73.**

14.The Court have considered the provision of Order 1 Rule 10(2) of CPC were very wide and the power of Courts were equally extensive. Even, without an application, impleaded as party, the Court can add any other party if such party is necessary party to enable Court to effectually and completely adjudicate questions involved in the suit. Necessary party is one without whom no order can be

effectively made and proper party is one whose presence is necessary as party and he had relevant evidence to give on some questions involved and he becomes necessary witness. But, in the present case, the petitioners/proposed parties and tenants are 3<sup>rd</sup> parties and they were no way connected in respect of suit schedule of property except the tenant. In the suit schedule of property, they cannot be added as the defendants, since they are not the legal heirs of the original owners of the suit schedule of property and there is no relief also claimed by the petitioners/plaintiffs against the proposed parties. If at all the 3<sup>rd</sup> defendant wants to income of the rent, they can very well to apply to the Court to file an appropriate application for appointing an Advocate Receiver for collecting the rental amount from the tenant and to deposit the Court or the 3<sup>rd</sup> defendant himself have right to file an application seeking direction to the tenant, who are in actual possession of the suit schedule of property to deposit the rental amounts. But, without doing so, the 3<sup>rd</sup> defendant has filed the present application, for impleading the tenant, since no relief is claimed by the plaintiffs against the proposed parties / 3<sup>rd</sup> parties in the suit for partition.

15.This Court very clearly held in the case of **S.Krishnan v.**

**Rathinavel Naicker and 22 others** reported in **2007 (2) CTC 73** as follows:

"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.”

16.Considering all the above facts and relevant provisions and judgments rendered by this Court and the Hon'ble Apex Court, it is made clear that if we look at the facts of the present case, the proposed parties are not proper and necessary parties, since no relief sought for by the plaintiffs against the proposed defendants in the suit. Apart from this, they are the tenants in the suit schedule of property.

17.Therefore, I am of the considered view that the order of the learned Principal District Judge, Dharmapuri in I.A.No.184 of 2010 cannot be sustained. The proposed parties who had no occasion to participate in the proceedings before the Court of first instance, actually have no role to play in the suit, since the proposed parties are only the tenant and no relief sought for by the petitioners/plaintiffs against the proposed parties and hence this Court it is just and necessary for warranting interference in the order passed in I.A.No.184 of 2010 in O.S.No.39 of 2009, dated 28.02.2011, on the file of the Principal District Court, Dharmapuri and accordingly, the

same is liable to the set aside.

18.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.184 of 2010 in O.S.No.39 of 2009, dated 28.02.2011, on the file of the Principal District Court, Dharmapuri;

(b) the trial Court is directed to dispose of the suit in O.S.No.39 of 2009 within a period of three months from the date of receipt of a copy of this order, without giving any adjournment to either parties. No costs. Consequently, connected miscellaneous petition is closed.

**04.07.2017**

Speaking Order  
Index:Yes

vs

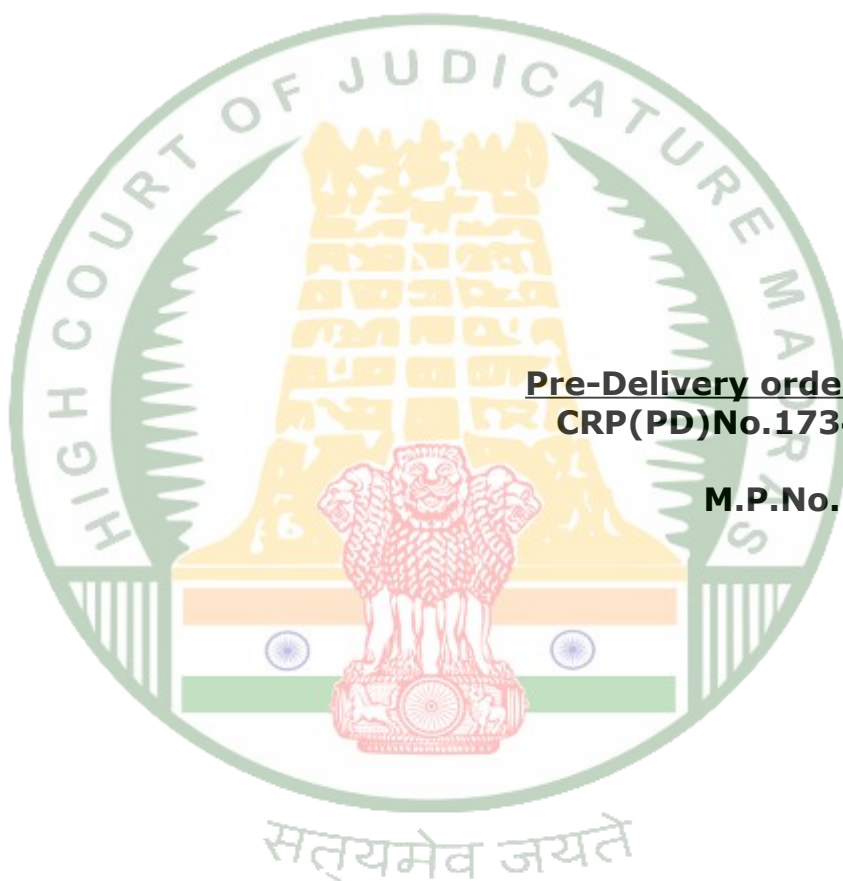
To

The Principal District Judge,  
Dharmapuri.

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**M.V.MURALIDARAN, J.**

VS



**Pre-Delivery order made in**  
**CRP(PD)No.1734 of 2011**  
**and**  
**M.P.No.1 of 2011**

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