

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2017

Coram

The Honourable Mr. Justice D.KRISHNAKUMAR

C.R.P.No.553 of 2017
& C.M.P.No. 2827 of 2017

M.P.Muthusamy

.. Petitioner/Proposed
respondent/3rd Petitioner

vs.

1. Sasikumar
 2. Matheswaran
 3. Senthilraman
 4. Sumathi
 5. Minor Pachayammal @ Sujeetha
 6. Minor Poonjalakshmi (Respondents 5 & 6 rep by Natural awards
in Sasikumar)
 7. Minor Koperundevi @ Abinaya (Minor rep by Natural Guardian rep
by Matheswaran)
 8. Minor Divya (Respondents 8 & (rep by Natural
Guardian Senthilraman)
 9. Minor Mukesh Natarajan
 10. N. Saroja
 11. S. Selvaraj
- .. Respondents/
Appellants/Respondents 1 to 9/
Respondents 1 & 2/
Respondents 10 & 11

Revision filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 04.01.2017 made in I.A.No.13 of 2016 in A.S.No.33 of 2012 on the file of the learned Additional District Court, Namakkal.

For petitioner : Mr.T.L.Thirumalaisamy
For respondents : Mr. V.Vijayshankar

O R D E R

This Civil Revision has been preferred against the order dated 04.01.2017 made in I.A.No.13 of 2016 in A.S.No.33 of 2012.

2. The tenth respondent herein filed the suit in O.S.No.302 of 2010 before the Sub Court, Namakkal against the respondents 1 to 9 to declare the title over the suit property and for delivery of possession. The said suit was decreed. Thereafter, the tenth respondent/plaintiff has executed a registered Settlement Deed dated 04.02.2016, in Document No.375 of 2016 in favour of the petitioner herein in respect of the suit property. Against the above said judgement and decree, respondents/defendants have preferred an appeal in A.S.No.33 of 2012 before the Additional District Court, Namakkal and the same is pending. At this stage, the petitioner has filed an application under Order 1 Rule 10 of CPC in I.A.No.13 of 2016 in the aforesaid appeal suit seeking to incorporate him as a party in the aforesaid appeal i.e., as a third respondent. The said application was dismissed. Against which, the present Civil Revision Petition has been filed before this court.

3. Learned counsel for the respondents would submit that when the appeal suit is pending before the Appellate Court, the settlement deed executed by the tenth respondent in favour of the petitioner is affected by the principle of lis pendence and therefore, the Court below rightly dismissed the said application on the ground of lis-pendence. Therefore, there is no need of interference by this Court.

4. Heard learned counsel for the petitioner as well as the learned counsel for the respondents.

5. It is an admitted fact that the 10th respondent had executed the Settlement Deed in favour of the petitioner and the same had been registered in Document No. 375 of 2016 when appeal suit in A.S.No.33 of 2012 is pending before the Additional District Judge, Namakkal. In the application in I.A.No.13 of 2016, the petitioner had specifically stated that in view of the Settlement Deed executed by the 10th respondent, the petitioner has become the absolute owner of the property and therefore, the petitioner is necessary party and ultimately, if any adverse order is passed in the aforesaid appeal, the right of the petitioner will be affected. It is further stated that there will be multiplicity of proceedings for the very same subject matter.

6. This Court in a decision in Devaki Thiyagarajan vs. Ahamed and others reported in 2015 (4) CTC 293 has held as follows:-

70. We have struck a balance between the submissions made on behalf both sides and ultimately found that as observed by the Division Bench of the Apex Court in the above

cited decision, the provisions of Order 1 Rule 10(2) of C.P.C., empowers court to add any person as a party at any stage of the proceedings.

71. As afore stated 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. Thiagarajan, 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.

71a. 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.

7. In the light of the aforesaid decision, this court is of the view that the petitioner is also a necessary party to the aforesaid appeal suit. It is to be noted that the petitioner has also filed an affidavit dated 16.03.2017 before this Court and paragraph-4 of the same would read thus:

"I submit that I am hereby giving an undertaking that I won't seek to reopen the case and further I won't take different stand than that of my vendor, the 10th respondent herein. Further, I will co-operate for early disposal of the above said appeal without seeking unnecessary time for the arguments on my side in the event that I was impleaded as 3rd respondent in the above said appeal A.S.No.33 of 2016 pending on the file of Additional District Court at Namakkal. I submit that I will abide any other conditions that this Hon'b'le Court may impose on me in the interest of justice while disposing the present Civil Revision Petition."

8. The undertaking given by the petitioner that he will not re-open the case and further he will not take a different stand than that of the stand taken by the tenth respondent namely, his vendor is hereby recorded. Further, the undertaking given by the petitioner that he will co-operate for early disposal of the above said appeal without seeking unnecessary time for argument on his side is also hereby recorded. By considering the above, in the light of the facts and circumstances of the case and in view of the undertaking affidavit filed by the petitioner, I have no hesitation to set aside the order passed in I.A.No.13 of 2016 in A.S.No.33 of 2012. Accordingly, the order passed in I.A.No.13 of 2016 in A.S.No.33 of 2012 is set aside and this Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To,

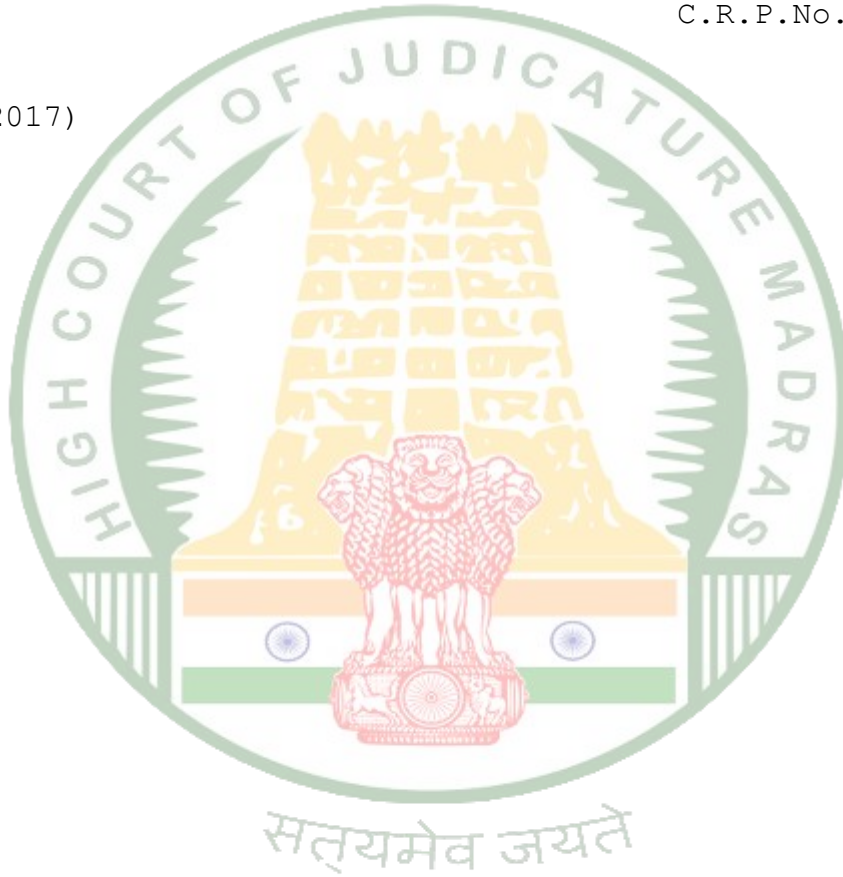
1. The Additional District
Judge (FTC), Namakkal.

+1cc to mr.V.Vijay Shankar, Advocate Sr. 18951

+1cc to Mr.T.C.Thirumalaisamy, Advocate Sr. 18567

C.R.P.No.553 of 2017

SR(CO)
VR(13/06/2017)



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