IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.620 of 2014
and
M.P.No.1 of 2014

1. Kandasamy Gounder
2. Avanashi Gounder ... Petitioners

vs.

1. Lakshmi
2. Kolandaivel ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.11.2013 passed by the learned Additional District Munsif, Tiruchengode in I.A.No.1147 of 2013 in O.S.No.810 of 2004.

For Petitioners : Mr.P.Valliappan

For Respondents : Served- No appearance

ORDER

Heard the learned counsel for the petitioner. Despite service being effected on the respondents, no one appeared.

2. The revision is filed by the sole plaintiff along with the proposed party, challenging the order refusing to implead the proposed party in the suit filed by the plaintiff for declaring his title to the suit property and for permanent injunction.

3. The brief facts of the case would run thus:

(i) The original plaintiff is the son of the proposed party. It is stated in the affidavit filed in support of the application to implead his father, that there was a partition between the revision petitioners and the respondents herein on 20.06.1984 and in the said partition, the petitioners were allotted 'A' scheduled property and they have been in possession of the same by cultivating the lands. It is further stated that since the counsel for the respondents had contended that the father of the plaintiff is a necessary party to the suit as he had a share in the properties as per the partition deed, the plaintiff has filed the said application to implead his father, who is also one of the sharers, as the second plaintiff in the suit.

(ii) The said application was vehemently opposed by the respondents/defendants denying the fact that they never ever stated that the father of the plaintiff is a necessary party to the suit. Besides, the suit claim is barred by time with respect to the proposed party. Therefore, the same has to be dismissed.

(iii) The learned Trial Judge, after elaborate consideration of all the facts and the position of law dismissed the application.

(iv) Being aggrieved by the same, the present revision is filed.

4. Admittedly, the trial is over in the suit and arguments also were heard in part. The application to implead the proposed party was taken up at this stage. The original plaintiff had filed the suit for declaration of his title on 11.06.2004, seeking his right under the partition that took place between the parties on 20.06.1984. But, in the present application he has stated that as per the said partition, both the plaintiff as well as the proposed party were jointly allotted the 'A' Scheduled property. If that is so, the plaintiff would have added the proposed party to the suit,

even at the inception of the suit. For the reasons best known to the plaintiff, he was not added as a party either as a plaintiff or as a defendant. If the properties allotted in the said partition deed, was a joint allotment, then the cause of action is joint and it is not a separable one. That being so, the proposed party ought to have been included in the suit even at the time of instituting the same.

5. Though the suit was filed on 11.06.2004, the present application to implead the proposed party, viz., the father of the plaintiff was taken up only on 11.11.2013, which is beyond the period of limitation. The plaintiff has taken up this application only after the cross examination by the defendants. In the cross examination, the plaintiff has specifically stated that he has not added his father, as held earlier, either as a plaintiff or as a defendant. Though the father also owns a share in Survey No.39/4, it is only after the cross examination of the plaintiff by the defendants, steps are taken to implead the proposed party. Even though the plaintiff and the proposed party are joint owners

of the suit property, in a suit for declaration, if the proposed party is added, at this point of time, for the cause of action that arose in the year 2004, the same would be clearly time barred. Nevertheless the plaintiff may be the *dominus litus* to the suit and he is free to add any one as the defendant in the suit instituted by him, in this case, he is seeking to implead the third party as the second plaintiff in the suit. When the plaintiff has not specifically stated as to what is the necessity or whether the proposed party is equally necessary or proper party to the suit, merely because Order I Rule 10(2) of the Code of Civil Procedure enables a party to be impleaded at any stage of the proceedings, that will not entitle the plaintiff to implead. Unless the plaintiff had established that the proposed party is a necessary party, without whose presence no effective or complete adjudication of the dispute could be made and no relief granted, the same cannot be entertained. It is also not established that the outcome of the suit would adversely affect the proposed party.

6. The petitioner has not made out a *prima facie* case, as to the cause of action against the proposed party or the judgment

in the suit would adversely be binding on the proposed party. When the suit is heard and had come to the end of the arguments, the petitioner has deliberately filed this application for the reasons best known to him. Even the proposed party has not independently claimed any right other than what has been claimed by the plaintiff. Therefore, the trial court has rightly dismissed the application, which does not suffer from any infirmity or illegality, warranting interference in this revision.

7. Accordingly, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2017

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Index: Yes/No
Internet: yes
To

The Additional District Munsif, Tiruchengode

PUSHPA SATHYANARAYANA.J

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