

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)Nos.1111 and 1112 of 2013
and
M.P.Nos.1 and 1 of 2013**

V.Mangalakshmi

.. Petitioner in both the CRPs

Vs.

1.Selvam

2.Elango

3.Anbazhagan

4.Ramesh

5.Kathalingam

.. Respondents in both the CRPs

WEB COPY

Prayer in CRP(PD)No.1111 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.02.2013 made in I.A.No.1023 of 2012 in I.A.No.794 of 2012 in O.S.No.435 of 2012, on the file of the 1st

Additional District Munsif at Puducherry.

Prayer in CRP(PD)No.1112 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.02.2013 made in I.A.No.1367 of 2012 in O.S.No.435 of 2012, on the file of the 1st Additional District Munsif at Puducherry.

(In both the CRPs)

For Petitioner : Mr.Ashohapathy

For Respondents : Mr.R.Thiagarajan (for R1 to R4)

No Appearance (R5)

COMMON ORDER

सत्यमेव जयते

Both these Civil Revision Petitions in C.R.P.Nos.1111 and 1112 of 2013 are being filed by the revision petitioner, as against the order of dismissal of I.A.No.1367 of 2012 and I.A.No.1023 of 2012 in I.A.No.794 of 2012, which came to be filed by the revision petitioner to implead herself as the 2nd defendant in the suit and as a

respondent to the injunction application pending therein in the suit respectively.

2.It is the case of the revision petitioner in both the Civil Revision Petitions that the above suit for bare injunction in O.S.No.435 of 2012 was filed by the respondents 1 to 4 herein as plaintiffs, as against the 5th respondent herein in respect of suit schedule property in R.S.No.57/23. The said suit came to be filed by the respondents 1 to 4 on a false claim as if they are the owner of the suit schedule property. But fact remains that originally the suit scheduled property was purchased by the revision petitioner by a registered sale deed dated 31.03.2011 bearing document No.1653 of 2011 from her vendor namely Kannan and she is in actual possession of the suit schedule property.

3.However, the respondents 1 to 4 being the adjacent owners, suppressing the fact that the revision petitioner is the owner of the suit scheduled property, with a malafide intention to encroach and grab upon the suit property has filed the above suit for bare injunction by arraying the 5th respondent herein as the sole defendant, who is a 3rd party not connected with the suit property. The 5th respondent

herein, though have no nexus with the property but was arrayed as a sole defendant. However by playing such fraud upon the Court, the respondents 1 to 4 managed to obtain an ex-parte decree of interim injunction. Thereafter having the order of interim injunction, the respondents 1 to 4 attempted to put up cement slabs in the suit property on 03.04.2012. Thereupon the revision petitioner filed two interlocutory applications in I.A.No.1367 of 2012 and I.A.No.1023 of 2012 in I.A.No.794 of 2012 under Order 1 Rule 10 (2) CPC to implead herself as the 2nd defendant in the main suit and as the 5th respondent in the above interim injunction application pending in I.A.No.794 of 2012. However, the learned trial judge on misconception of facts and law has dismissed both the applications of the revision petitioner by holding that the revision petitioner is neither necessary nor proper party to the litigation. The said orders are impugned in this civil revision petitions.

4.I heard Mr.Ashohapathy, learned counsel appearing for the revision petitioner and Mr.R.Thiagarajan, learned counsel appearing for the respondents 1 to 4 and no representation on behalf of the 5th respondent and perused the entire records.

5.It is seen from the records that the suit scheduled property comprise of two items of property, mentioned in the suit schedule as "A" & "B". At the outset the attention of this Court was drawn to an order of the trial Court made in I.A.No.794 of 2012 dated 27.04.2012 annexed in page No.14 of the typed set of papers, disclosing that the interim injunction in favour of the respondents 1 to 4 granted by the trial Court was not extended in respect of suit "B" schedule property, in pursuance of a Memo filed by the revision petitioner claiming title over the same, which was also substantiated by nine documents enclosed with the Memo pertaining to the suit "B" schedule. But it is noticed that respondents 1 to 4 have not filed any document before the trial Court to substantiate their claim in respect of "B" scheduled property.

6.It is further noticeable that the revision petitioner has filed a suit for declaration and permanent injunction in O.S.No.967 of 2012 as against the respondents herein. Thus it is obvious that the respondents 1 to 5 remain arrayed as parties to one other suit for declaration filed by the revision petitioner in respect of the very same property.

7.On careful perusal of the impugned order, it is seen that the

reason assigned by the learned trial judge on dismissing the revision petitioner's applications is that the petitioner is neither necessary nor proper party, since the suit is for bare injunction and such injunction was sought confined against the 5th respondent alone and the same was not prayed as against the revision petitioner.

8.It is needless to say for this Court that such a mechanical approach cannot be adopted in a suit while dealing with an application made for impleading under Order 1, Rule 10 (2) CPC. It is palpable that where a complete and effective adjudication cannot be done without a party, such party is a necessary party. Only the presence of such parties will enable the Court to adjudicate the subject issue more effectually and completely. The Courts have to endeavor at avoiding multiplicity and protracted litigations, besides avoiding conflicting decisions.

9.In the light of the above legal proposition and the facts of the case on hand, the judgment and decree in I.A.No.1023 in I.A.No.794 of 2012 in O.S.No.435 of 2012 and I.A.No.1367 of 2012 in O.S.No.435 of 2012, dated 06.02.2013, are liable to be set aside.

10.In the result:

(a) both the Civil Revision Petitions are allowed, by setting aside the orders in I.A.No.1023 in I.A.No.794 of 2012 in O.S.No.435 of 2012 and I.A.No.1367 of 2012 in O.S.No.435 of 2012, dated 06.02.2013, on the file of the I Additional District Munsif, Puducherry;

(b) the trial Court is directed to carry out the amendment within a period of 15 days from the date of receipt of a copy of this order;

(c) the impleading defendant is directed to file her written statement within a period of 30 days thereafter;

(d) the trial Court is directed to dispose the suit within a period of three months thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

31.01.2017

Note:Issue order copy on 17.08.2017

Internet:Yes

Index:Yes

vs

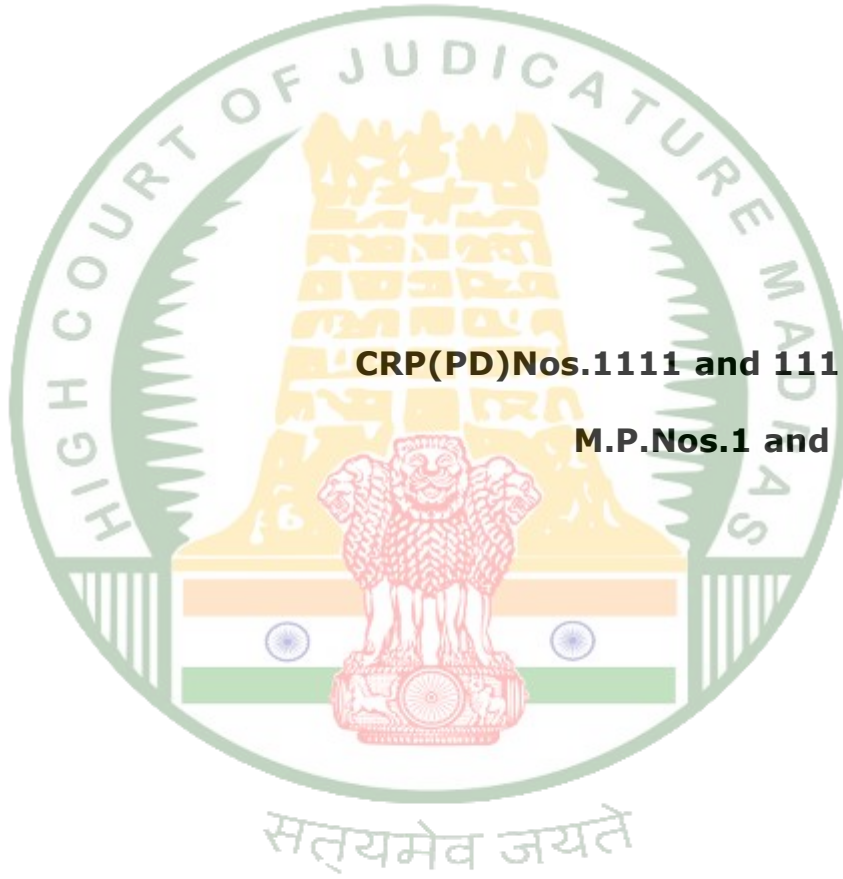
To

The 1st Additional District Munsif
Puducherry.

WEB COPY

M.V.MURALIDARAN, J.

VS



**CRP(PD)Nos.1111 and 1112 of 2013
and
M.P.Nos.1 and 1 of 2013**

WEB COPY

31.01.2017