

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD).No.250 of 2013
and
M.P.No.1 of 2013**

1.P.N.Nallasamy

2.Karuppayyammal

3.Arumugham

4.Rukmani

.. Petitioners

Vs.
सत्यमेव जयते

1.Chinnammal

2.Chenniappan @ Chennimalai Gounder

3.The Chairman

Sree Kongu Nadu Education Trust,
Rep. by its Managing Trustee,

Mr.P.Gokulakrishnan,
No.456/82, Chinnamman Complex,
Chennimalai Road, Perundurai.

4.Thiyagarajan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order passed in I.A.No.594 of 2012 in O.S.No.398 of 2009, dated 22.11.2012, on the file of the Subordinate Court, Perundurai.

For Petitioners : M/s.P.T.Ramadevi

For Respondents : Mr.N.Manokaran

ORDER

The plaintiffs in O.S.No.398 of 2009 on the file of the learned Sub-Judge, Erode, are the civil revision petitioners before this Court.

2.It is the case of the plaintiffs is that they have filed the suit against the original defendants 1 to 3 for partition of the suit property. Pending suit, the plaintiff has filed petition in I.A.No.594 of 2012 for impleading one Mr.Thiagarajan son of Durairaj as 4th defendant in the suit, since the said Thiagarajan is necessary party in the suit for

impleading as one of the defendants in the suit.

3. On receipt of the notice in I.A.No.594 of 2012 in O.S.No.398 of 2009 the proposed party Mr.Thiagarajan has filed his counter denying the allegations set out in the affidavit as one of the defendants in the suit. The counter filed for proposed defendant that the petition itself is not maintainable and he is not necessary party in the suit.

4. Apart from this, when the proposed party is not necessary party and no way connected to the suit schedule of property, only with an aim to drag the suit, is unnecessarily filed the application in I.A.No.594 of 2012. He has also stated that how the proposed party has inherited the right in the suit properties. Therefore, the proposed party is prayed for the dismissal of the petition filed in I.A.No.594 of 2012. Challenging the said order, the present Civil Revision Petition has been filed before this Court.

5. Considering both side case, the learned Sub-Judge, Perundurai, dismissed the petition, on the ground that the proposed party is a 3rd party and he is no way connected with the suit schedule of property, since the plaintiff also not stated how the proposed party

is related to the suit schedule of property and whether the proposed party Mr.Thiagarajan, who is the legal heir of the original owner of the suit schedule of property.

6.Therefore, the petition in I.A.No.594 of 2012 filed by the plaintiff to implead the proposed party is not necessary party and the same was dismissed by the learned Judge on 22.11.2012. Challenging the said order, the plaintiff has filed the present Civil Revision Petition before this Court.

7.I heard M/s.P.T.Ramadevi, learned counsel appearing for the petitioners and Mr.N.Manokaran, learned counsel appearing for the respondents and perused the entire records.

8.Admittedly, the suit filed for partition before the trial Court. In the partition suit, only the legal heir alone should be implead as parties, but, the 3rd party should not be impleaded as a party. In this case, the plaintiff has filed a petition in I.A.No.594 of 2012, for impleading one Mr.Thiagarajan, as one of the defendants in the suit. As per the averment in the affidavit filed by the petitioners it is stated as follows:

"2.We have filed the above suit against the respondents herein. Due to over sight we omitted to add one Thiagarajan, son of Durairaj who is also having right over the suit property. He is a necessary party to the suit. We were neither negligent nor careless in omitting his name. The same will not alter the character of the suit. Therefore he may be impleaded as 4th defendant in the above suit for proper adjudication. Otherwise we will be put to irreparable loss and great hardship.

3.Therefore it is just and necessary that this Honourable Court may be pleased to implead the person as 4th defendant in the above suit as detailed in the accompanying petition and thus render justice."

9.On fair reading of the averments made in the affidavit, it is stated that how Mr.Thiagarajan, related to the plaintiffs and defendant family and how they stated that the said Mr.Thiagarajan is entitled for the partition of the suit schedule of property, but except the para-2 in the affidavit, there is no other averments in the affidavit.

10.The learned counsel appearing for the petitioners during the

course of arguments has produced the judgment in the case of **Amit Kumar Shaw and Another v. Farida Khatoon and Another** reported in **(2005) 11 Supreme Court Cases 403**, the Hon'ble Supreme Court very categorically held that as per the Order 1 Rule 10 of CPC, the power to strike out or add parties can be exercised by the Court at any stage of proceedings, but the Court must have looked into that whether the impleading parties have any interest in the suit property and if he is not added as a party in the said suit whether his right can be effected or not. In this case on hand, the plaintiff have filed an application in I.A.No.594 of 2012 for impleading one Mr.Thiagarajan as 4th defendant in the suit, but in the affidavit filed by the petitioner, it is nowhere stated that what is the interest in the suit or whether the Thiagarajan is one of the legal heir of the original owner was not stated so. Therefore, the Judgment produced by the petitioner is not applicable in this case on hand.

11.In the absence of correct pleadings in respect of allegations set out in the impleading petition for impleading the said Mr.Thiagarajan, this Court is not warranting necessary to interfere in the said order and accordingly this civil revision petition is liable to be dismissed.

12.In the result:

(a)this civil revision petition is dismissed by confirming the order passed in I.A.No.594 of 2012 in O.S.No.398 of 2009, dated 22.11.2012, on the file of the Subordinate Judge, Perundurai;

(b)since the suit is for the year 2009, the learned Sub-Judge, Perundurai, is hereby directed to dispose the suit within a period of three months from the date of receipt of a copy of this order, without giving any adjournments to either parties. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2017

vs

Index:Yes

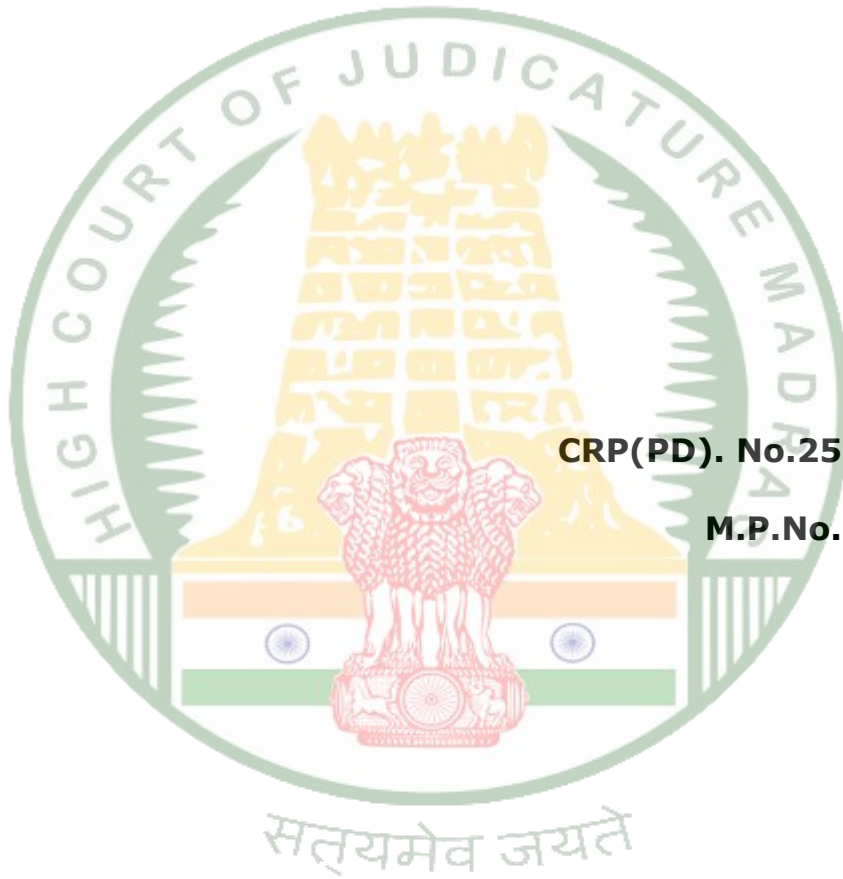
Speaking order

To

The Subordinate Court,
Perundurai.

M.V.MURALIDARAN,J.

VS



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