

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3347 of 2012
and
M.P.No.1 of 2012**

M.Muthukrishnan

.. Petitioner

Vs.

1.V.Saraswathi
2.R.Alamelu Ammal

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.1144 of 2009 in O.S.No.133 of 2004, dated 03.02.2012, on the file of the learned Principal District Munsif, Alandur.

For Petitioner : Mr.M.Raja Sekahr

For Respondents : Mr.R.Selvakumar (for R1)

Mr.N.Venkateswaran (for R2)

ORDER

The revision is directed against the order dated 03.02.2012 made in I.A.No.1144 of 2009 in O.S.No.133 of 2004 on the file of the learned Subordinate Judge, Principal District Munsif, Alandur.

2.The first defendant in the above suit in O.S.No.133 of 2004 is the revision petitioner herein. The said suit is filed by the first respondent herein for the relief of declaration of title and recovery of possession of suit scheduled property. According to the plaintiff/1st respondent, she is the absolute owner of the suit scheduled property and she has purchased the same from one Alamelu Ammal wife of one Radhakrishnan. According to the plaintiff/1st respondent, she purchased the suit property vide sale deed dated 13.12.1992, and she was in possession and enjoyment of the suit property.

3.It is her case that she left to Saidapet for avocation and taking advantage of her absence the petitioner herein /1st defendant removed the hut of the 1st respondent high handedly. The petitioner also put up an illegal construction of wall over the suit property. Therefore the

above suit was filed by her for declaration of title and directing petitioner to hand over suit property after removing the super structure put up therein.

4.The revision petitioner/1st defendant filed a written statement denying the case of the plaintiff as untrue and claimed that one Meenakshi Ammal the revision petitioner's foster mother is the legally wedded wife of Radhakrishnan. Further, it is the specific case of the revision petitioner / 1st defendant that Alamelu Ammal's marriage with Radhakrishnan is not valid in law. Accordingly Alamelu Ammal was not allotted with any share over Radhakrishnan's property.

5.In the said suit the plaintiff/1st respondent filed an Interlocutory Application in I.A.No.1144 of 2009 under Order 1, Rule 10(2) of CPC to implead his vendor or Alamelu Ammal as second defendant in the suit.

6.The said I.A. was resisted by the revision petitioner pleading that Alamelu Ammal do not have any share over the property and that she has no right to sell any extent over the suit property. It is also the revision petitioner's contention that Alamelu Ammal since being no

way connected to suit property and an utter stranger to suit property is an unnecessary party to the suit. The trial Court on hearing upon the Interlocutory Application allowed the same, holding that Mrs.Alamelu Ammal is a necessary party to the suit. As against the said order the present CRP is being filed.

7.I heard Mr.M.Raja Sekahr, learned counsel for the revision petitioner, Mr.R.Selvakumar, learned counsel for the 1st respondent and Mr.N.Venkateswaran, learned counsel for the 2nd respondent and perused the entire materials available on record.

8.The learned counsel for the revision petitioner would submit that Alamelu Ammal is not liable to be impleaded for lack of material particulars as to the alleged document Number and sale consideration claimed to have acted upon between them. Again it is also his contention that though the revision petitioner admits that R.Alamelu Ammal as the 2nd wife of the above said Radhakrishnan, the title over the suit property was not admitted. Accordingly Alamelu Ammal is unnecessary party to suit.

9.Hearing upon the above rival submission and on perusal of

documents some undisputed facts are found that the property originally belongs to one Radhakrishnan and he had two wives namely Mennakshi Ammal and Alamelu Ammal.

10.The record disclosed that the suit property is being claimed by the revision petitioner through Meenakshi Ammal, whereas the 1st respondent claims through Alamelu Ammal by way of sale. The records further disclose that there are other civil suit pending between Alamelu Ammal and Meenakshi Ammal.

11.It is equally important to state that the revision petitioner and 1st respondent Vis a Vis title and right to alienate disputes the suit property against each others.

12.In the said circumstance I do not find any illegality or infirmity over the conclusion of Trial Court holding that Alamelu Ammal is a necessary party to the suit as one of the issues raised and liable to be decided is when the 1st respondent admitted Alamelu Ammal was got married by Radhakrishnan, legal right of Alamelu Ammal over the property of Radhakrishnan is to be gone into. Apart from the above finding of trial Court this Court would also like to emphasize that

plaintiff is the Dominus litus and she has every right to choose as to who should be the defendant and as against whom relief to be sought. It is for her to prove her case. The defendant cannot choose a Co-defendant or cannot decide as to the relief to be claimed by a plaintiff.

13. In view of the forgoing reason, I do not find any merits in this Civil Revision Petition.

14. In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.1144 of 2009 in O.S.No.133 of 2004, dated 03.02.2012, on the file of the learned Principal District Munsif, Alandur;

(b) the trial Court is directed to give opportunity to both the parties and take up the suit in O.S.No.133 of 2004, on day to day basis, without giving any adjournment to either parties, and dispose of the same within a period of two months from the date of receipt of a copy of this order, since the suit is of the year 2004 and pending for more than 13 years and both the

parties are hereby directed to co-operate for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2017

Note: Issue order copy on 16.11.2018
vs

Internet: Yes
Index: Yes

To

The Principal District Munsif,
Alandur.



WEB COPY

M.V.MURALIDARAN, J.

VS



**CRP(PD)No.3347 of 2012
and
M.P.No.1 of 2012**

WEB COPY

31.01.2017