

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.01.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)Nos.644 and 645 of 2013
and
M.P.Nos.1 and 1 of 2013**

CRP(PD)No.644 of 2013

1.Ezhilarasi

2.S.Vengatesan

.. Petitioners

Vs.

1.Malliga

2.Devi

3.D.Balaji

4.Kasinathan

..Respondents

Prayer in CRP(PD)No.644 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.12.2012 made in I.A.No.34 of 2012 in O.S.No.6 of 2011, on the file of the Additional Sub Judge at Puducherry.

and

CRP(PD)No.645 of 2013

1.Ezhilarasi

2.S.Vengatesan

.. Petitioners

Vs.

1.Mohanambal

2.Kasinathan

..Respondents

Prayer in CRP(PD)No.645 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.12.2012 made in I.A.No.35 of 2012 in O.S.No.8 of 2011, on the file of the Additional Sub Judge at Puducherry.

Petitioners : Mr.P.Ashokapathy
(In both the CRPs) for M/s.Pass Associates

Respondents : Mr.R.Thiagarajan
(for R1 to R3 in CRP.No.644 of 2013
and R1 in CRP.No.645 of 2013)

COMMON ORDER

Both the Civil Revision Petitions are arising out of the orders dismissing the impleading applications filed by the revision petitioners in two suits in O.S.Nos:6 & 8 of 2011. The parties in both the suits are one and the same and the relief claimed in both the suits is also one and the same, hence common order is passed in these Civil Revision Petitions.

2.The factual matrix of the case on hand in both the civil revision petitions is that there are two suits for rectification of the suit scheduled property in O.S.Nos.6 and 8 of 2011 pending before the learned Additional Sub-Court, Puduchery. The suit in O.S.No.6 of 2011 was filed by the respondents 1 to 3 herein in C.R.P.No.644 of 2013, as plaintiffs as against the 4th respondent herein/defendant, who is their vendor. According to the respondents 1 to 3 in C.R.P.No.644 of 2013 / the plaintiffs in O.S.No.6 of 2011, they have purchased a stretch of property in Survey No.148/3 in Saram Revenue Village vide a registered sale deed dated 20.10.1998. Whereas in their sale deed dated 20.10.1998, the Survey Number stood erroneously mentioned

as R.S.No.148/2 instead of R.S.No.148/3, therefore the above suit was filed for rectification of sale deed.

3.In the meantime, the latter suit in O.S.No.8 of 2009 came to be filed by the 1st respondent in C.R.P.No.645 of 2013 as plaintiff as against the 2nd respondent herein/ defendant, who is her vendor. It is noteworthy that the 4th respondent in C.R.P.No.644 of 2013 and the 2nd respondent in C.R.P.No.645 of 2013 are one and the same and having executed the above sale deeds, besides being one amongst the defendant in either suit, he was party to either suit. According to the 1st respondent in C.R.P.No.645 of 2013, she has purchased a piece of property in Survey No.148/3 in Saram Revenue Village vide a registered sale deed dated 26.04.2007, whereas Survey No. in the said sale deed dated 26.04.2007 was erroneously mentioned as R.S.No.148/2 instead of R.S.No.148/3, therefore the above suit was filed for rectification.

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4.It is the specific case of the revision petitioners that the property in Revenue Survey No.148/3 measuring to an extent of 2640 Sq.ft., is at present owned by the revision petitioners. Therefore the revision petitioners are just necessary parties to the above suit and

they are liable to be impleaded in the above two suits.

5. Whereupon the revision petitioners, so as to establish their case before the trial court have filed two Interlocutory Applications in I.A.No.34 of 2012 in O.S.No.6 of 2011 and I.A.No.35 of 2012 in O.S.No.8 of 2011 under Order 1, Rule 10 to implead them as the defendants in both suit. However, the learned trial judge on misconception of law and fact has dismissed both the I.A.s by holding that the revision petitioners are not necessary parties for the suit and their presence is not required to decide the case on hand. The said order is arbitrary, unsustainable and the same is liable to be set aside. The said orders made in I.A.Nos.34 and 35 of 2012 are impugned order in C.R.P.Nos.644 and 645 of 2013.

6. I heard Mr.P.Ashokapathy, learned counsel appearing for the petitioners in both the CRPs and Mr.R.Thiagarajan, learned counsel appearing for the respondents 1 to 3 in CRP.No.644 of 2013 and 1st respondent in CRP.No.645 of 2013 and the entire records are perused.

7. The learned counsel for the revision petitioners would submit that the revision petitioners are necessary and proper parties in both

the suits, since they have unfettered right and title over the property comprised in revenue survey No.148/3 which is sought to be rectified by the respective respondent/plaintiff in either suit. That apart the revision petitioners have also filed a suit in O.S.No.142 of 2011 for declaration and possession to an extent of 844.8 Sq.ft comprised in R.S.No.148/3. Therefore they are just and necessary parties to the above suits. Moreover any decision rendered in the above suit in O.S.No.6 and 8 of 2011, in the absence of the revision petitioners would be binding and affecting the revision petitioners adversely. However, the learned trial judge without appreciating the above facts has dismissed the revision petitioners' application and the same is warranted interference by this Court.

8.Per contra, the learned counsel for respondents would submit that the suits on hand are neither for declaration nor for recovery of possession nor for injunction, but only for rectification of an instrument. The revision petitioners are unnecessary to the proceedings. The revision petitioners being 3rd parties and the plaintiff in the respective suits being the dominus litis cannot be compelled to add parties against whom he does not want to fight. Furthermore such application by the 3rd parties for impleading cannot be allowed for the

mere asking. Again merely because the parties will be incidentally affected by judgment or order of court they cannot be proper and necessary parties to suit.

9. In this context it would be relevant to look into the following decisions of this Court:

(i). Reported in **2009 (4) CTC 174** in the matter of **S.Dhanaraj v. Dhakshina Mara Nadar Sangam**, holding that the plaintiff cannot be directed to implead a third party against whom no relief is sought and the third parties cannot be added as party to a suit, merely because they will be affected by the judgment/order of the court incidentally, the relevant discussion is extracted hereunder:

“18. Indeed, the first respondent/plaintiff cannot be directed to implead the revision petitioners as proposed parties/defendants 12 to 17 against whom no relief admittedly sought for in the suit. Continuing further, it is to be noted that where an effective and complete relief can be obtained by a litigant, then it is not necessary to join any other party, in the considered opinion

of this Court.

19. On a careful consideration of respective contentions and bearing in mind the overall assessment of the facts and circumstances of the case in a cumulative fashion and in an integral manner, this Court is of the considered view that the revision petitioners are not a proper and necessary parties to the suit and as a matter of fact, they cannot be added as the proposed defendants 12 to 17 merely because they will be affected by the judgment/order of the Court incidentally and even in the absence of the revision petitioners, the trial Court can effectively adjudicate upon the disputes/controversies involved in the suit between the parties and in that view of the matter, the revision petition fails and the same is hereby dismissed leaving the parties to bear their own costs. Resultantly, the connected Miscellaneous Petitions are closed.”

(ii). In a yet another Judgment reported in **2008 (2) CTC 734** in the matter of ***M.Satishkumar v. M. Ramasamy and five others***, holding that a plaintiff in a suit cannot be compelled to add parties against whom he does not want to fight unless it is a compulsion of the rule of law.

(iii). The other Judgment reported in **2009 (5) CTC 259** in the matter of ***Rajapalayam Town Amman Pottal Middle North street Pallar Common Fund Rep through its present Nattanmai & another v. Rajapalayam Town Amman Pottal Middle North street Devendra Kula Velalar Community, Rep through its President Aarumugam and others***, holding that it is for the plaintiff to choose a party as defendant in Suit and party whom may be incidentally or likely be affected by judgment or order of court need not be added as party to the suit.

(iv). Again in a Judgment reported in **1999 (3) CTC 335** in the matter of ***S. Ramasamy and four others v. The State of Tamil Nadu, rep by its Collector, Kanayakumari District at Nagercoil and another,***

holding that the plaintiff being the dominus litis, an application for impleading by a third party cannot be allowed for the mere asking.

10.It is needless to say that the case on hand is for rectification of a deed amongst the respondents and not for any other relief as against any 3rd persons or against the revision petitioners herein. Though the revision petitioners claim that they are owner of the suit property to an extent of 2,178 Sq.ft, the rectification sought by the respective respondent/plaintiff will not disentitle the revision petitioners right if any over the said survey number in their suit for declaration.

11.Therefore, in the light of the above legal preposition and the factual scenario of the case, this court is of the view that the revision petitioners/3rd parties/ proposed defendants are not necessary parties and their presence is not necessary for the disposal of the above suits for rectification. The records disclose that the learned trial judge has rightly appreciated the above legal principles and the facts involved in the case on hand, which does not require any interference by this Court.

12.In the result, both the Civil Revision Petitions fails and the same are hereby dismissed. There is no order as to cost. Consequently, connected miscellaneous petitions are closed.

30.01.2017

Note:Issue order copy on 28.08.2017
Internet:Yes
Index:Yes

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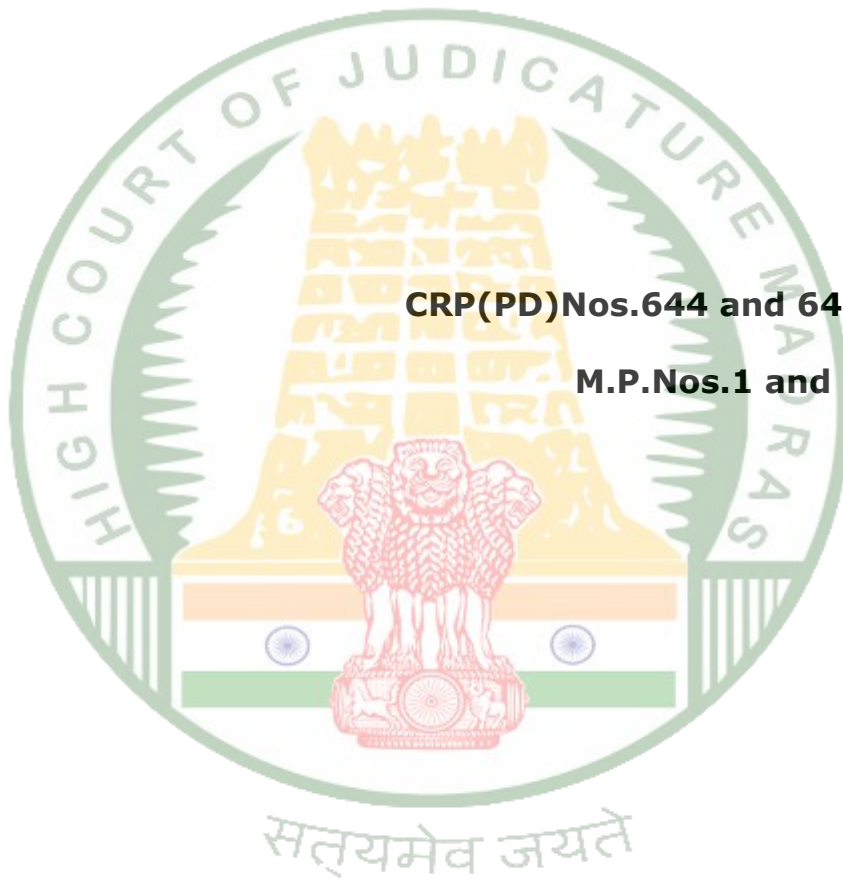
The Additional Sub Judge,
Puducherry.



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M.V.MURALIDARAN, J.

VS



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