

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).Nos.2559 to 2561 of 2017

and C.M.P.Nos.12223 to 12225 of 2017

CRP.PD.No.2559 of 2017

1.Palanivel
2.Thirumurugan
3.Vimalraj
4.Kannan
5.Subramanian

... Petitioners

Vs.

1.Manamohan
2.Ramesh
3.Thangarasu
4.Shankar
5.Natana Sigamani
6.Vinoth

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment dated 03.03.2017 on the file of the Additional Sub Court, Mayiladuthurai made in C.M.A.No.9 of 2016 confirming the order of the Principal District Munsif Court, Mayiladuthurai dated 12.01.2016 made in I.A.No.312 of 2015 in O.S.No.47 of 2015.

CRP.PD.No.2560 of 2017

1.Paneer Selvam
2.Gajendran
3.Kaliamurthy
4.Rajagopal

5.Selvam
6.Rajendran

.. Petitioners

Vs.

1.Manamohan
2.Ramesh
3.Thangarasu
4.Shankar
5.Natana Sigamani
6.Vinoth
7.Amirthalingam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment dated 03.03.2017 on the file of the Additional Sub Court, Mayiladuthurai made in C.M.A.No.10 of 2016 confirming the order of the Principal District Munsif Court, Mayiladuthurai dated 12.01.2016 made in I.A.No.313 of 2015 in O.S.No.47 of 2015.

CRP.PD.No.2561 of 2017

1.Sundaram
2.Raj
3.Sekar
4.Murugan
5.Ravichandran
6.Rajendran
7.Vadivel

.. Petitioners

Vs.

1.Manamohan
2.Ramesh
3.Thangaraju
4.Shankar
5.Natana Sigamani
6.Vinoth

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment dated 03.03.2017 on the file of the Additional Sub Court, Mayiladuthurai made in C.M.A.No 8 of 2016 confirming the order of

the Principal District Munsif Court, Mayiladuthurai dated 12.01.2016 made in I.A.No.314 of 2015 in O.S.No.47 of 2015.

For Petitioners
 (in all CRPs.) : Mr.S.Sounthar
 For R1(in all CRPs.) : Mr.V.Rangarajan
 For R2 to R6 : Mr.A.Arunbabu
 For R7
 (in CRP.No.2560/2017) : Given up

COMMON ORDER

These civil revision petitions filed to set aside the Judgments passed by the learned Additional Sub Judge, Mayiladuthurai made in C.M.A.Nos.9, 10 & 8 of 2016 dated 03.03.2017 confirming the order passed by the learned Principal District Munsif, Mayiladuthurai dated 12.01.2016 made in I.A.Nos.312 to 314 of 2015 in O.S.No.47 of 2015.

2. According to the learned counsel for the petitioner, the first respondent has filed a suit in O.S.No.47 of 2015 for permanent injunction in respect of 'A' schedule property and recovery of possession in respect of 'B' schedule property. Now, the dispute is with regard to 'B' Schedule property Third parties to the suit in O.S.No.47 of 2015 have filed the applications in I.A.Nos.312 to 314 of 2015 for impleading themselves as parties in the suit alleging that they are worshipping the temple in the suit 'B' schedule property for many generations.

3. The learned counsel for the petitioner would submit that there is a temple in the name of “Veeran, is the 'B' Schedule property in the suit, which has been worshiped for many generations by the villagers of Perambur Village. The temple lies on the southwestern side of the suit property, with 10 feet open space. The Veeran deity is a village God having no image or idol. The villagers used to perform Ear boring ceremony for children and other family functions in Veeran Temple. The petitioners have filed these applications for impleading as party defendants in the aforesaid suit, being worshippers of Veeran deity in their village and the same was dismissed. Challenging the dismissal order, the petitioners have preferred the appeal in Civil Miscellaneous Appeal in CMA.Nos.8 to 10 of 2016 before the learned Additional Subordinate Judge, Myladuthurai and the same were dismissed. Aggrieved by the dismissal orders, the petitioners have filed the present civil revision petitions before this Court.

4. The learned counsel for the petitioners submitted that the petitioners are necessary parties in the above said suit. The petitioners being the worshippers of Veeran deity which is shown in the 'B' schedule property, are having right over the said property. Both the Courts below, without considering the contention of the petitioners in proper perspective dismissed

the same. Hence, the petitioners pray for setting aside the orders of the courts below.

5. Per contra, learned counsel for the respondent/plaintiffs submitted that the respondents herein /plaintiffs interested the dominant of the suit, the petitioners are not necessary parties. The respondent has purchased the property in the year 2013 and filed the present suit for permanent injunction and recovery of possession in respect of 'B' schedule property. Even though, the aforesaid prayer, the petitioners seek for recovery of 'B' schedule property against the respondents 2 to 6. The above said respondents filed written statement by stating that the respondents are voluntary worshippers of Veeran deity and the petitioners also contended that there is a Veeran God and Poojas also performed by the villagers.

6. The respondents/plaintiffs have disputed the fact that there is no Veeran deity, worshipped, by the villagers. After filing the suit, the villagers has put up the idol in the Veeran temple and performed poojas in the said temple and contended that the defendants/respondents 2 and 3 and petitioners are worshippers of the said god. Therefore, the petitioners have no *locus standi* to implead themselves as parties to the suit.

7. In the written statement filed by the respondents 2 and 3, it is stated that the villagers performed the poojas for the above said Veeran god . At this stage, the trial Court cannot decide that the aforesaid title of the temple was existing or subsequent to the filing of the suit and the same can be decided only at the time of trial after adducing the oral and documentary evidence. Therefore, the petitioners, being the villagers are also necessary parties to decide the suit by affording opportunity to the petitioners. Therefore, to avoid multiplicity of proceedings for the very same cause of action, whether the proposed parties/ respondents 2 to 4 are also entitled to right in the suit property, has to be decided at the time of trial Court in the suit. However, the instant application has been filed to implead the respondents 2 to 4 as parties to the proceedings. Further, the dispute in the suit would be resolved only in the presence of all the stakeholders and in order to avoid multiplicity of proceedings, the impleading applications are allowed.

8. Order 1 Rule 10(2) reads as follows:

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

The Hon'ble Supreme Court in ***Thompson Press (India) Ltd., Vs. Nanak***

Builders & Investors Ltd., & Others reported in (2013) 5 SCC 397 at paragraphs 29, 30 and 31 has held as follows:

29. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in *Rajender Singh Vs. Santa Singh and Their Lordships* with approval of the principles laid down in *Jayaram Mudaliar V. Ayyaswami* reiterated: (*Rajender Singh* case, SCC p.711, para 15)

"15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.

30. In the light of the settled principles of law on the

doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.

31. Order 1 Rule 10 CPC reads as under:

"10. Suit in name of wrong plaintiff-

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties: The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

In Devaki Thiyagarajan Vs. Ahamed & Others reported in 2015 (4) CTC 293,

the Division Bench of this Court at paragraphs 54,62,63,71,71 has held as follows:

54. In so far as the present Appeal is concerned, we would like to place it on record that the Principle of lis pendens embodied in Section 52 of the T.P.Act being a Principle of Public Policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking Notice of a title acquired during the pendency of the litigation. The mere pendency of a Suit does not prevent one of the parties from dealing with the property constituting the subject matter of the Suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any Decree, which may be passed in the Suit unless the property was alienated with the permission of the Court.

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

63. Under Order 1, Rule 10, C.P.C, a party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the Suit and then he can be impleaded.

71. As aforestated in the earlier paragraphs, the Respondents 2 to 5/Plaintiffs 1 to 4 have not alienated the

Suit property in favour of the Appellant/proposed 5th Plaintiff with the permission of the Court. However, as argued by Mr.R.Thiyagarajan, since the Respondents 2 to 5/Plaintiffs 1 to 4 have allegedly sold the Suit property in favour of the Appellant/proposed 5th plaintiff, they might not show much interest or due diligence in conducting the trial of the Suit. Even if it is presumed that the Appellant/proposed 5th Plaintiff is not included as one of the co-Plaintiffs to prosecute the Suit as against the Respondents 6 to 9, she would definitely approach the Court of law with a new Suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided that the Appellant/proposed 5th Plaintiff could be allowed to be impleaded as the 5th Plaintiff.

9. The Object of the Order 1, Rule 10(2) C.P.C, to implead a third party to the suit would be resolved in the presence of all and in order to avoid multiplicity of proceedings. Further in the light of the decision of this Court in 2016 SCC Online Mad 26015 in J.Mallika @ Maheswari and another vs.

1.S.Kotteswaran and 7 others which reads as follows:

5. The petitioners are aggrieved primarily on the ground that the impleading parties are not having any interest in the suit property. The said question requires to be decided only during the course of trial. The suit is one

for partition.

6. It is not as if the petitioners herein are bound to prove the negative. It is always open to the petitioners to file additional written statement in the light of the order impleading the respondents 2 and 3 as parties and the amendment to the plaint. I am therefore of the view that there is no merit in the contention taken by the petitioners with respect to the impleading of respondents 2 and 3.

In the light of the aforesaid decisions, the impugned orders passed by both the Courts are liable to be set aside. At this stage, the learned counsel appearing for both the parties have requested this Court that the said suit shall be disposed within a time frame as may be fixed by this Court.

10. In view of the submissions made by the learned counsel for both sides, I am inclined to pass the following orders:

a) The impugned Judgments delivered by the learned Additional Sub Judge, Myladuthurai in C.M.A.Nos 8 to 10 of 2016 are set aside . Consequently, orders of the learned Principal District Munsif, Myladuthurai made in I.A.Nos.312 to 314 of 2015 are also hereby set aside.

(b) Interlocutory Applications in I.A.Nos.312 to 314 of 2015 are allowed. The Trial Court is directed to

implead the revision petitioners as parties in O.S.No.28 of 2008.

c) The learned Principal District Munsif, Mayiladuthurai, is directed to dispose of the suit in O.S.No.47 of 2015, after carrying out the necessary amendment in the plaint.

d) On instructions, both the parties undertake that they will cooperate for speedy disposal of the suit before the trial court. The trial Court is further directed to dispose of the suit within a period of six months thereafter.

Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

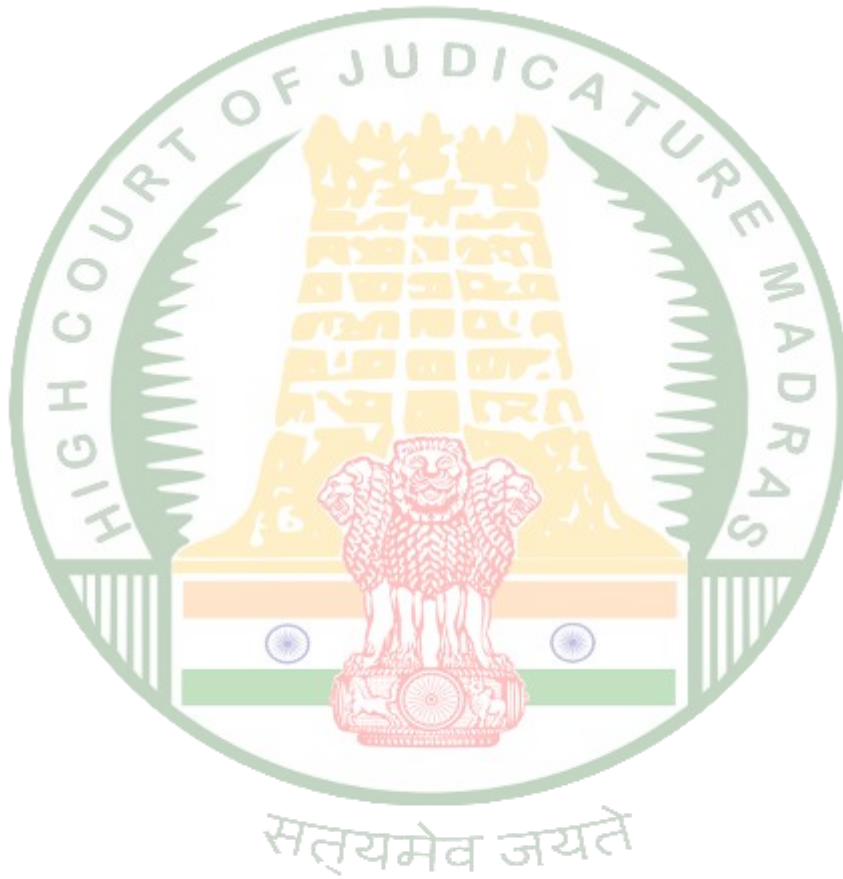
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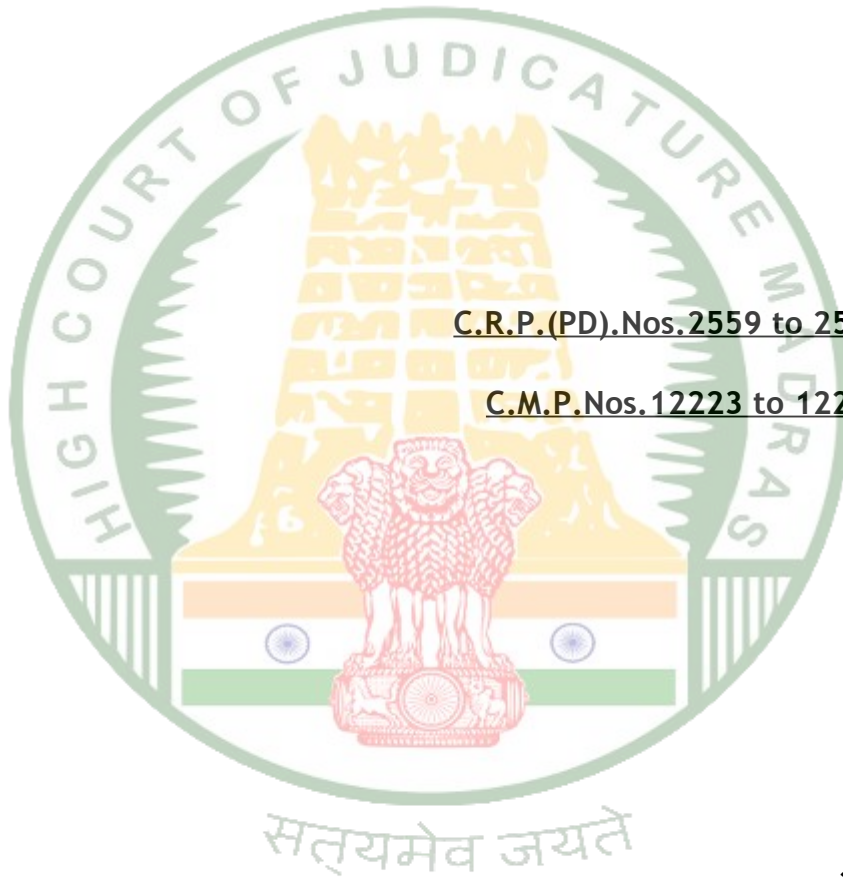
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Mayiladuthurai.
2. The Additional Sub Court
Mayiladuthurai.



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D.KRISHNAKUMAR,J.

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