

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD). No.3905 of 2017

and

C.M.P.No.18231 of 2017

S.Tamilselvan

.. Petitioner

Vs.

1.S.Sundaramoorthi Pillai

2.The Commissioner,
Avadi Municipality,
Avadi,
Ambattur Taluk,
Tiruvallur District.

3.Mrs.Vimala

4.Mrs.Premila

5.Mrs.Vanitha

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.09.2017 made in I.A.No.1668 of 2016 in O.S.No.177 of 2007 on the file of the District Munsif Court, Ambattur.

For Petitioner : Mr.A.Gouthaman
For R1 : Mr.K.Anbarasan
For R2 to R5 : No appearance

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ORDER

The Civil Revision Petition is filed to set aside the fair and the decreetal order dated 07.09.2017 made in I.A.No.1668 of 2016 in O.S.No.177 of 2007 on the file of the District Munsif Court, Ambattur.

2.According to the petitioner, the petitioner's father viz., Sachidhananantha Pillai and his brother S.Sundaramurthy Pillai has filed a suit in O.S.No.177 of 2007 on the file of the District Munsif Court at Ambatur for the relief of permanent injunction restraining the defendant his men agents, sub ordinates and contractors from any manner trespassing or constructing the over head water tank or any other construction in the above suit property. Mr.V.Sachidhananantha Pillai died on 02.09.2014. The petitioner being the legal heir of Sachidhananantha Pillai, filed an Interlocutory Application in I.A.No.1668 of 2016 in the aforesaid suit to implead him as proposed plaintiff and the said application was dismissed by the Court below and the present Civil Revision Petition is filed before this Court.

3.The learned counsel appearing for the petitioner submitted that the petitioner is the legal heir of the father, the said Sachidhananatha Pillai and therefore, he has to be impleaded as a necessary party in the said suit.

4.The learned counsel appearing for the respondents would submit that the petitioner has not got any right to implead him as a party in the said suit. The Commissioner has rejected the claim for impleading the family members in the suit because they are not necessary party in the suit.

5.The learned counsel appearing for the petitioner further submitted that the petitioner's father Sachidhananatha Pillai filed the suit for bare injunction restraining the defendant his men agents, subordinates and contractors from any manner trespassing or construct the over head water tank in the open space abutting the Thamaraikulam in front of the historical temple constructed by the plaintiff's ancestors.

6.During the pendency of the aforesaid suit, the petitioner's father died and therefore, the petitioner filed the application to implead him as

proposed plaintiff in the said suit. In the light of the decision of this Court reported in **2015 (4) CTC P 293**, the petitioner has to be impleaded as a necessary party, to decide the issue and therefore, the order passed by the Court below is not sustainable and the same is liable to be set aside.

7. In view of the above, the impugned order is set aside and the Civil Revision Petition stands allowed. The District Munsif, Ambattur is directed to dispose of the suit as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.03.2018

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Speaking/Non-Speaking order

Index : Yes/No

Internet: Yes/No

Note: Issue order copy on 21.06.2018

To

The District Munsif, Ambattur.

D. KRISHNAKUMAR J.,

ah



CRP(PD). No.3905 of 2017

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