

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 270 of 2018

and

CMP. No.1481 of 2018

Villupuram Lorry Driver,
Cleaner Munnetra Sangam
Rep. By its Secretary
Mr. Rajangam

.. Petitioner

Vs.

1. Mrs. Lakshmi Sampath
2. Mrs. Alamelu
3. Ms. Gajalakshmi

.. Respondents

सत्यमेव जयते

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.10.2017 in I.A.No. 287 of 2017 in O.S. No.279 of 2013 on the file of Additional District Munsif Court, Villupuram and to dismiss the said application with costs.

For Petitioner : Ms. C. Harini

ORDER

The present Civil Revision Petition is filed against the fair and decreetal order dated 24.10.2017 in I.A.No. 287 of 2017 in O.S. No.279 of 2013 on the file of Additional District Munsif Court, Villupuram.

2. The learned counsel for the petitioner would submit that the petitioner sangam has filed the suit against the 1st respondent for permanent injunction. The 2nd and 3rd respondents have filed I.A. No. 287 of 2017, under Order 1 Rule 10 of CPC, seeking to implead them as party defendants in the aforesaid suit. According to the petitioner, the suit has been filed for permanent injunction. However, without considering the submissions of the petitioner, the court below has erroneously allowed the application. In support of his submission, the learned counsel for the petitioner relies upon the decision of this Court in the case of *Sm. Laxmi Suresh vs. Sri Aduikesava Perumal Peyalwar Devasthanam & Ors.*, reported in 2010-3-LW-62, wherein it has been held that the proposed party need not be impleaded in the suit, in order

to decide the issues arising between the parties concerned. The plaintiff in the suit being the *dominus litus* could choose the parties to the suit.

3. However, in the aforesaid judgment, this Court has held that a necessary party is one without whom no effective order can be made and a proper party is one whose presence is necessary for a complete and final decision to be made by the court concerned. Further, in the light of the aforesaid judgment, the learned counsel for the petitioner would submit that in the present suit, the respondents 2 and 3 are not necessary parties.

4. The Hon'ble Supreme Court in the case of ***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.

Following the above cited decision, the Division Bench of this Court in the case of ***Devaki Thiyagarajan Vs. Ahamed & Others*** reported in **2015 (4) CTC 293**, in paragraph 66 it held as follows :-

“66. His Lordship has also observed that Order 1 Rule 10 CPC 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. It is manifest that Order 1 Rule 10(2) CPC gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose

presence in the court is essential for effective determination of the issues involved in the suit.

5. On the facts of the present case, the grand father of the 2nd and 3rd respondents, is the auction purchaser and claims title over the property. Considering the aforesaid facts, the court below has allowed the application. It is further stated that the 2nd and 3rd respondents have filed the suit in O.S. No.145 of 2007 for declaration of title and the same is still pending before the court below. Therefore, the order passed by the court below does not deserve any interference by this Court. Hence, the revision petition fails and the same is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

29.01.2018

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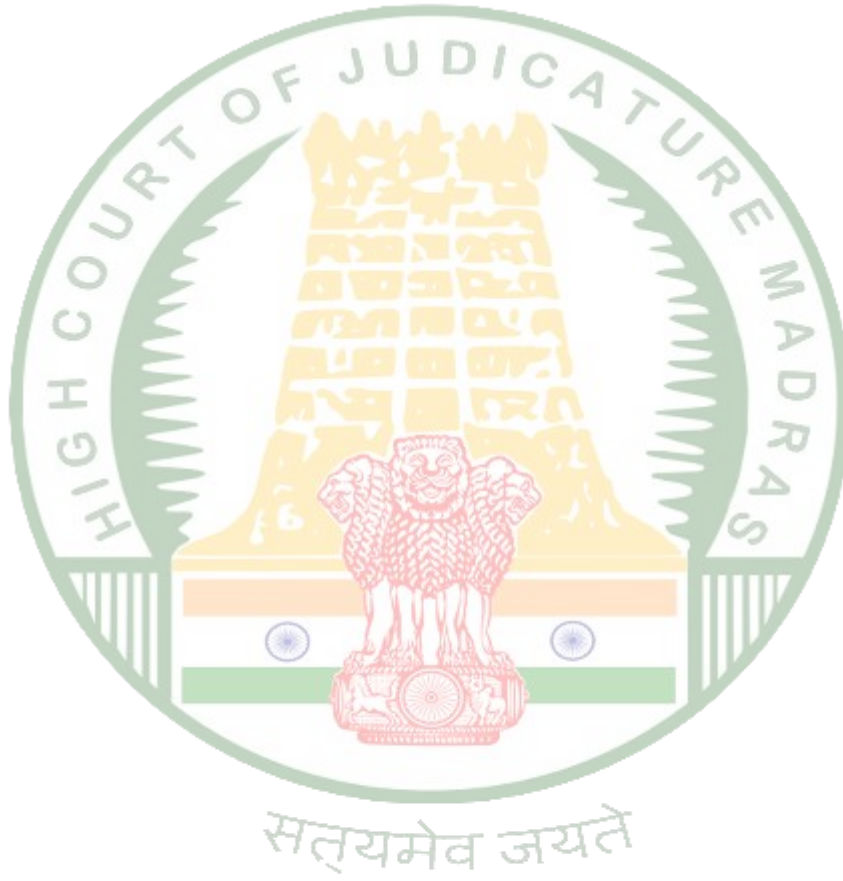
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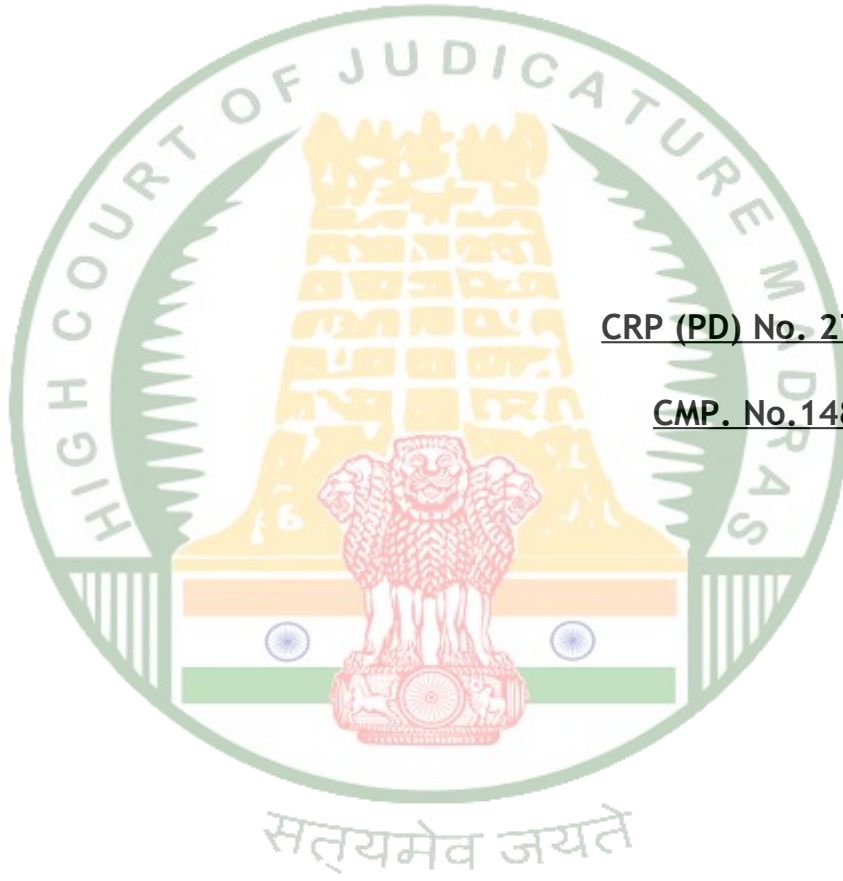
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