

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) Nos.294 & 295 of 2018

and

CMP. Nos.1613 & 1614 of 2018

K.Ramalinga Gounder

.. Petitioner

Vs

1.Malathi

.. First respondent in
CRP (PD) No.294 of 2018

2.A.Rajamani

.. First respondent in
CRP (PD) No.295 of 2018

2.P.Thangavel

.. Second respondent in
both CRPs.

PRAYER: These Civil Revision Petitions are filed under Article 227 of the Constitution of Indian, to set aside the fair and final order dated 31st August 2017 passed in I.A. No.648 & 649 of 2017 in O.S. No.119 of 2015 on the file of the Court of the Subordinate Judge at Dharapuram.

For Petitioner in both CRPs

:Mr.L.Chandrakumar

COMMON ORDER

These Civil Revision Petition is filed against the fair and final order dated 31.08.2017 passed in I.A. Nos.648 & 649 of 2017 in O.S. No.119 of 2015 on the file of the Court of the Subordinate Judge at Dharapuram.

2.The learned counsel for the petitioner would submit that originally, the revision petitioner has filed the suit in O.S. No.83 of 2012 before the learned Subordinate Judge, Udumalpet for recovery of possession, arrears of rent and other consequential reliefs and the same has been transferred to the learned Subordinate Judge, Dharapuram and re-numbered as O.S. No.119 of 2015 and the aforesaid suit was posted for trial on 03.10.2016. PW1 was examined and Exs. A1 to A6 were marked. At this stage, the second respondent has filed additional written statement along with application in I.A. No.586 of 2016 to implead him as a party and the same was allowed. Against which the revision petitioner has filed CRP (PD) No.1730 of 2017 before this Court and obtained orders for speedy disposal of the suit. Thereafter, PW1 further examined and Exs. A7 and A8 were marked and PW1 was cross examined partly. On 21.07.2017, the first respondent in both CRPs has

filed an application in I.A. No.648 & 649 of 2017 under Order 1 Rule 10(2) r/w Section 151 of Code of the Civil Procedure, 1908 to implead him as a second defendant which was allowed on 31.08.2017. Challenging the aforesaid application the petitioner has preferred the present Civil Revision Petition before this Court.

3.Mr.L.Chandrakumar, the learned counsel for the petitioner submits that the petitioner has filed the suit for recovery of possession against the tenant/second respondent. The first respondent in both CRPs has filed an application in I.A. No.648 & 649 of 2017, by stating that the first respondent have the title over the suit property on the basis of the sale deed marked under Ex. A3. The Court below has failed to consider the dictum of the *dominus litus* of the petitioner/plaintiff, to implead her as a party in the aforesaid suit. Therefore, the order passed by the Court below is erroneous and liable to be set aside.

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3.I have considered the facts and submissions made by the learned counsel for the petitioner. The first respondent claiming title over the purchase of the suit property, has filed an application to implead her as necessary party in the aforesaid suit.

4. "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 aforesaid 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.

71(a). Further, we do not see any collusiveness between the Appellant/proposed 5th Plaintiff and the Respondents 2 to 5/Plaintiffs 1 to 4. Section 52 of T.P.Act is a substantive law, whereas the provisions of Order 1, Rule 10(2) of C.P.C., is a procedural law. Even though the Respondents 2 to 5/Plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present Suit, Order 1, Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as Plaintiff or Defendant upon or without any Application of either party, whose presence

appears to be necessary in Order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit.”

5. In the light of the aforesaid facts and the decision of this Court, the order passed by the Court below is confirmed, there is no warrant to interfere with the order passed by the trial Court.

6. In fine, these Civil Revision Petition are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

29.01.2018

Index: Yes/ No

Internet: Yes/No

Speaking Order/Non Speaking Order

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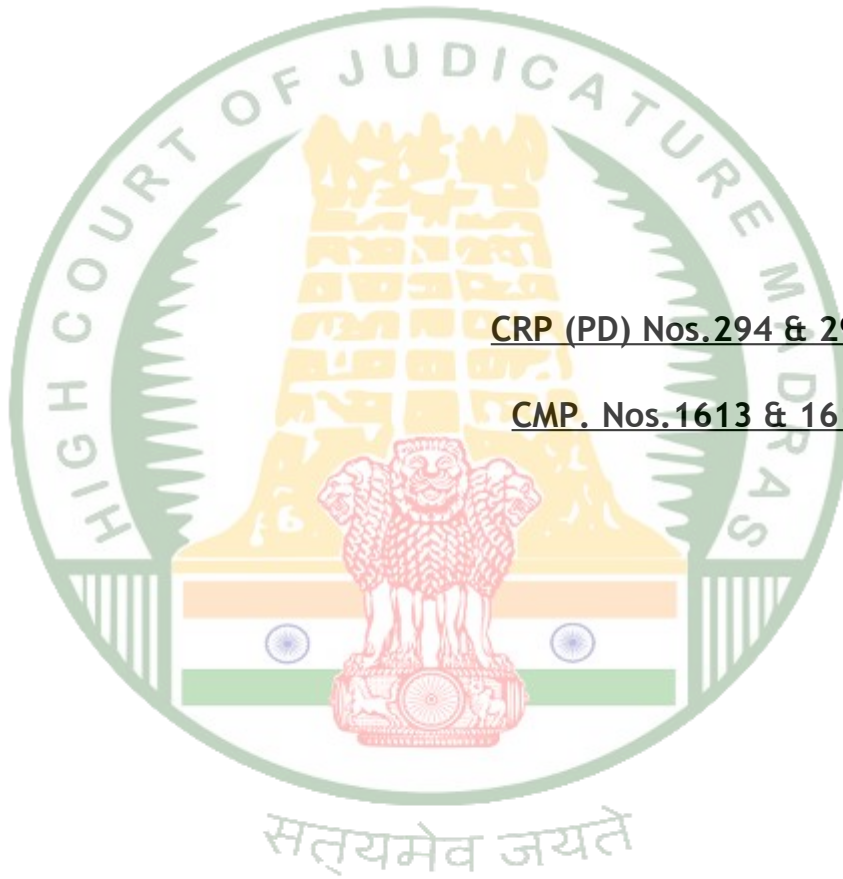
To

The Subordinate Judge,
Dharapuram.

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D. KRISHNAKUMAR J.,

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