

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.318 of 2018

and

CMP. No.1697 of 2018

G.Kothandapani

.. Petitioner

Vs

1.R.Sivashankari
2.S.Kuppusamy
3.G.Francis
4.S.Gnanasundarm
5.S.Ashok Kumar Birla
6.Anbu Juliet Mala
7.Armel Madharasi
8.G.Velmurugan

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of Indian, to set aside the fair and decretal order dated 16.09.2017 made in I.A. No.275 of 2016 in O.S. No.1433 of 2006 on the file of the I Additional District Munsif at Puducherry.

For Petitioner :Mr.T.P.Manokaran,
Senior Counsel for
Mr.K.P.Jotheeswaran
Mr.T.M.Naveen
Mr.G.Shabnam

For Respondents : Mr.S.Sathish, R1/Caveator

ORDER

This Civil Revision Petition is filed against the order dated 16.09.2017 made in I.A. No.275 of 2016 in O.S. No.1433 of 2006 on the file of the I Additional District Munsif at Puducherry.

2.The learned senior counsel for the petitioner would submit that the petitioner has filed the suit in O.S. No.1433 of 2006 before the learned I Additional District Munsif, Puducherry against the 2nd to 8th respondents to declare that the plaintiff is the absolute owner of the suit property and grant of permanent injunction in the aforesaid suit. Written statement has been filed by the respondents. At this stage, the first respondent has filed an application in I.A. No.275 of 2016 to implead her as a party in the said suit. The said application has been allowed by the Court below. Hence, the petitioner has preferred the present Civil Revision Petition before this Court.

3.According to the learned senior counsel for the petitioner, the first respondent is not a necessary party in the aforesaid suit. It is for

the plaintiff to decide whom to implead as a party and also relied upon the Doctrine of *Dominus Litus*, therefore, the order passed by the Court below is liable to be set aside.

4.Per contra, the learned counsel for the first respondent/caveator would submit that the petitioner has not impleaded the vendor viz., predecessor to the title, Saraswathy, as a party in the suit. One Saraswathy has purchased the suit property in the year of 2010 and own all the property. Subsequently, the first respondent was also purchased the aforesaid property. However, the petitioner has not impleaded the vendors as a party in the said suit. If the 1st respondent is impleaded as a party, no prejudice would be caused. The Court below has clearly observed that the first respondent has no independent claim or right over the suit property, since, he is claiming rights only through the first respondent/defendant in the suit. Hence, the Civil Revision Petition is liable to be dismissed.

5.Heard the submissions made by both the parties and perused the materials available on record.

6. The point for consideration is that whether the first respondent is a necessary party in the suit or not? According to the petitioner, pending the suit, the first respondent has purchased the suit property. In the light of judgment of Apex Court reported in **2007 AIR SCW 6314 in the case of Sunil Gupta V. Kiran Girhotra and others**, wherein the Apex Court has held that:

“20. Even otherwise ordinarily a transferee pendent lite without leave of the Court cannot be impleaded as a party. (See Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Another (2004) 1 SCC 191). 2003 AIR SCW 5858

21. Furthermore, the plaintiff in the suit is the dominus litis. If he intends to take a calculated risk in the matter, the Court may not exercise its discretionary jurisdiction. (See Kasturi v. Iyyamerumal and Others (2005) 6 SCC 733 Para 18 and Dhannalal v. Kalawatibai and Others (2002) 6 SCC 16 Para 23) 2005 AIR SCW 2368 2002 AIR SCW 2873.”

In view of the above, the first respondent is not a necessary party in the said suit.

7. This Court has considered the provisions of Order 1 Rule 10 of

the Code of Civil Procedure *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(a) 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.

8. In the light of the provision under Order 1 Rule 10 of the Code of Civil Procedure, the Court below has also given its findings that the first respondent is claiming the right only through the first respondent/defendant in the said suit. Therefore, the order passed by the Court below is perfectly valid, in accordance with law. There is no warrants to interfere with the order passed by the Court below. Hence, the Civil Revision fails, accordingly, this Civil Revision Petition is liable to be dismissed.

D. KRISHNAKUMAR J.,

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9. In fine, The Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

29.01.2018

Index: Yes/ No

Speaking Order/Non Speaking Order

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To

The I Additional District Munsif,
Puducherry.

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