

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.2578 of 2016

P.S.Thirunavukkarasu .. Petitioner

Vs

1.R.Harikrishnan

2.M.D.Gnanam .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.08.2015 in I.A.No.91 of 2015 in O.S.No.168 of 2009 on the file of the District Munsif Court, Tambaram.

For Petitioner : Mr. R.Radha Pandian

For Respondents : Mr.J.Ram

ORDER

This revision petition has been filed to set aside the fair and decretal order dated 11.08.2015 in I.A.No.91 of 2015 in O.S.No.168 of 2009 on the file of the District Munsif Court, Tambaram.

2. According to the petitioner, the petitioner filed a suit in O.S.No.168 of 2009 seeking for declaration on the file of the District Munsif Court, Tambaram. The petitioner filed an application in I.A.No.91 of 2015 in O.S.No.168 of 2009 under Order 1 Rule 10(2) of CPC to implead the proposed second respondent as a party in the aforesaid suit. The Court below erroneously dismissed the said application. Challenging the aforesaid order, the petitioner has filed the present Civil Revision Petition.

3.The learned counsel for the petitioner submitted that the second respondent purchased property on 01.10.1997 from the first respondent/defendant. Therefore, the petitioner filed I.A.No.91 of 2015 in O.S.No.168 of 2009 under Order 1 Rule 10(2) C.P.C to implead the proposed second respondent as a party in the aforesaid suit. The Court below without considering the plea of the petitioner, dismissed the application. Hence, he prayed to set aside the impugned order.

4.In support of his submission, the learned counsel for the petitioner relied on the decision of the *Division Bench of this Court* in **Devaki**

Thiyagarajan Vs. Ahamed & Others reported in **2015 (4) CTC 293**, wherein, in paragraphs 64, 66, 70 and 71(a), it has been held as follows:

64. Mr.R. Thiyagrajan, learned counsel appearing for the appellant/proposed fifth plaintiff has placed reliance upon the catena of decisions in order to support his contention, of which, the decision reported in (2013) 5 SCC 397 between Thomson Press (India) Limited vs. Nanak Builders and investors private limited and others, is very much relevant.

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.

70. We have struck a balance between

the submissions made on behalf both sides and ultimately found that as observed by the Division Bench of the Apex Court in the above cited decision, the provisions of Order 1 Rule 10(2) of C.P.C., empowers court to add any person as a party at any stage of the proceedings.

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. Per contra, the learned counsel for the respondents submitted that the petitioner has filed the present application belatedly and the proposed party is not a subsequent purchaser as the sale was done in the year 1997 i.e. prior to the filing of the suit. Therefore, the Court below rightly dismissed the said application. Hence, the Civil Revision Petition is liable to be dismissed.

6. This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

7. On a perusal of records, it is seen that the second respondent is a necessary party in the suit as he is a purchaser of the suit property and it is open to the respondents to raise their objections before the Court below at the time of trial in the said suit.

8. 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 parties and in order to avoid multiplicity of proceedings. Order 1 Rule 10(2) of the Code of Civil Procedure

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."

9. Considering the facts and circumstances of the case, in the light of the decision **cited supra**, in the interest of justice and considering the fact that the suit is of the year 2009, this Court is inclined to pass the following order:

"(a) The order passed in I.A.No.91 of 2015 in O.S.No.168 of 2009 pending on the file of the Additional District Munsif Court, Tambaram dated 18.09.2013, is hereby set aside.

(b) The Trial Court is directed to implead the proposed second respondent as second defendant in O.S.No.91 of 2015 and it is further directed to dispose of the suit in O.S.No.91 of 2015 pending on its file on or

before 30.07.2018, after carrying out the necessary amendment in the plaint.

(c) Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed."

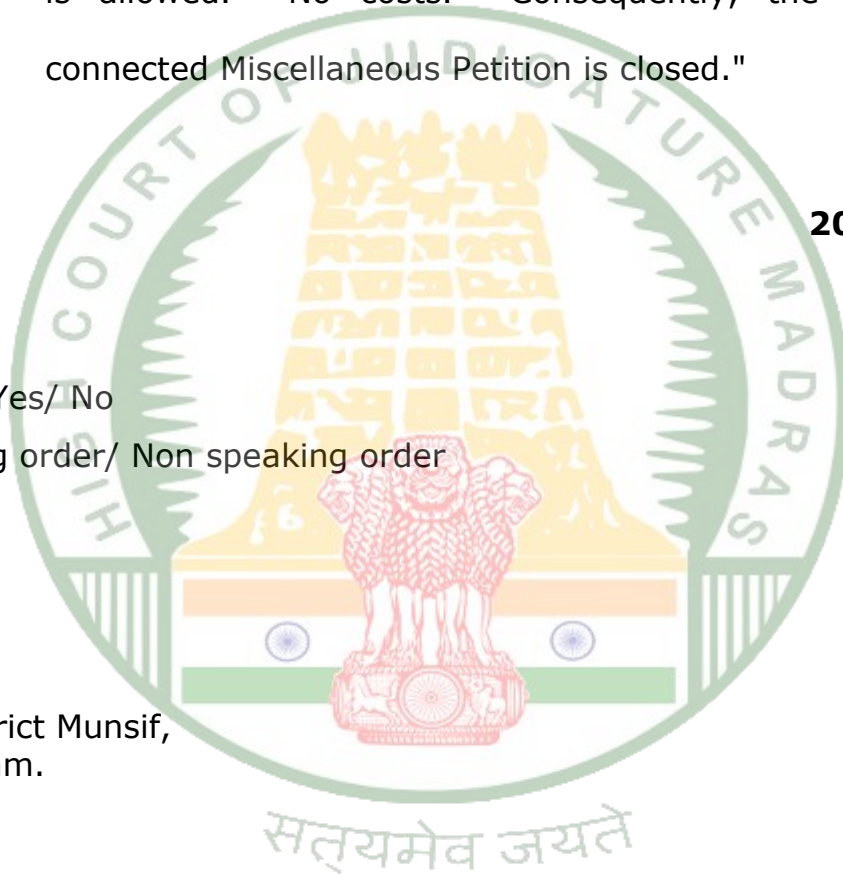
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Index : Yes/ No

Speaking order/ Non speaking order
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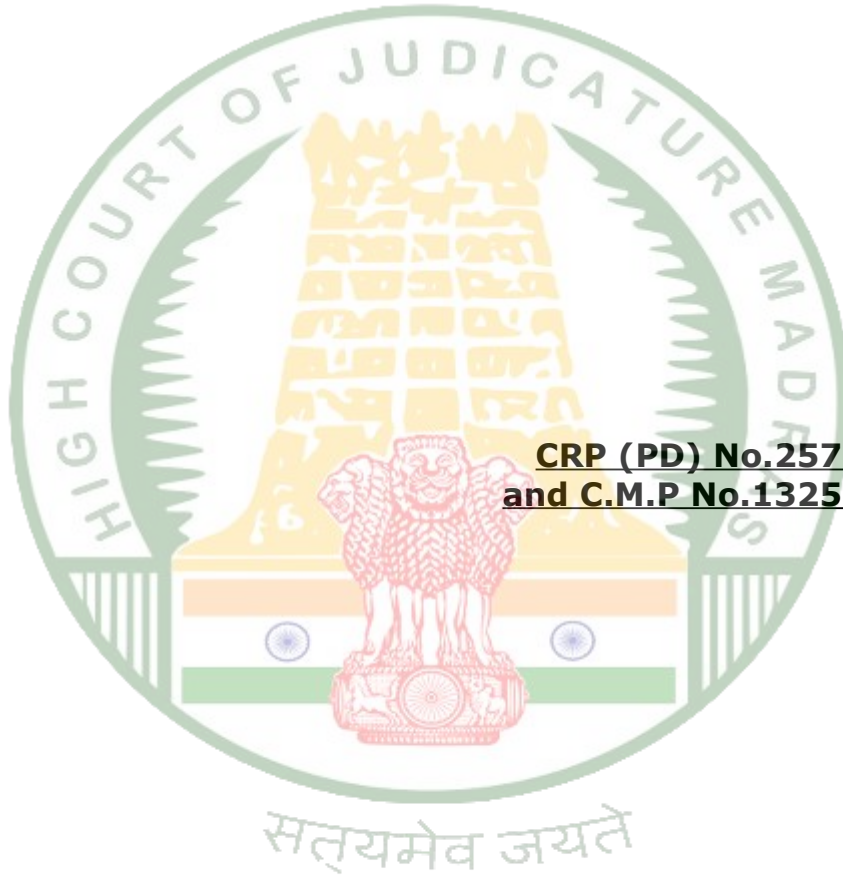
The District Munsif,
Tambaram.



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D. KRISHNAKUMAR J.,

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