

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 3310 of 2016

and

CMP. No. 16898 of 2016

Lourdu Savio

.. Petitioner

Vs

1. Elavarasi

2. Radhakrishnan

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 19.07.2016 passed in I.A. No. 484 of 2016 in O.S. No. 59 of 2012 by the Principal District Munsif, Gingee.

For Petitioner : Mr. S. Kaithamalai Kumaran

For Respondents : Mr. S. Sathyaraj

ORDER

This Civil Revision Petition is filed to set aside the order and decretal order dated 19.07.2016 passed in I.A. No. 484 of 2016 in O.S.

No. 59 of 2012 by the Principal District Munsif, Gingee.

2. The petitioner has filed a suit in O.S. No. 59 of 2012 for declaration of title against his mother and two brothers. In the aforesaid suit, the respondents herein have filed an Interlocutory Application in I.A. No.484 of 2016 seeking to implead them as party in the suit. According to the petitioner, the court below has allowed the application without considering the case of the petitioner. Hence, the present revision petition is filed before this Court.

3. The learned counsel for the petitioner would submit that the 1st defendant initially executed a settlement deed in favour of the petitioner. But, subsequently the same was cancelled and the same was made in favour of the 2nd and 3rd defendants. Therefore, the aforesaid suit was filed for declaration, claiming right over the suit property. The respondents herein are not necessary parties in the aforesaid suit. Hence, the order of the court below is liable to be set aside.

4. Per contra, the learned counsel for the respondents would submit that the father of the respondents herein, who is entitled only to

1/3rd share of the suit property, had sold the entire property to the mother of the petitioner. Hence, the petitioner is not entitled to 2/3rd of the suit property. Considering the dispute raised in the suit property, the court below has rightly allowed the application to implead them as party respondents.

5. Considered the facts of the case and the submission of the learned counsel for both the parties.

6. The petitioner has filed the suit for declaration of title, in respect of the entire suit property. Whereas the respondents herein have filed the application to implead themselves as party to the suit, claiming share in the suit property. Following the decision of 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 , the Division Bench of this Court in the case of **Devaki Thiyagarajan Vs. Ahamed & Others** reported in 2015 (4) CTC 293, in paragraph 66, has 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.

....

71. As aforestated 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. ”

7. In the light of the decision cited supra, to avoid multiplicity of proceedings, this Court is of the view that the respondents herein are necessary parties in the proceedings of the suit and hence there is no error or illegality in the order passed by the court below.

8. Therefore, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

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Index: Yes/ No

Speaking Order/Non Speaking Order

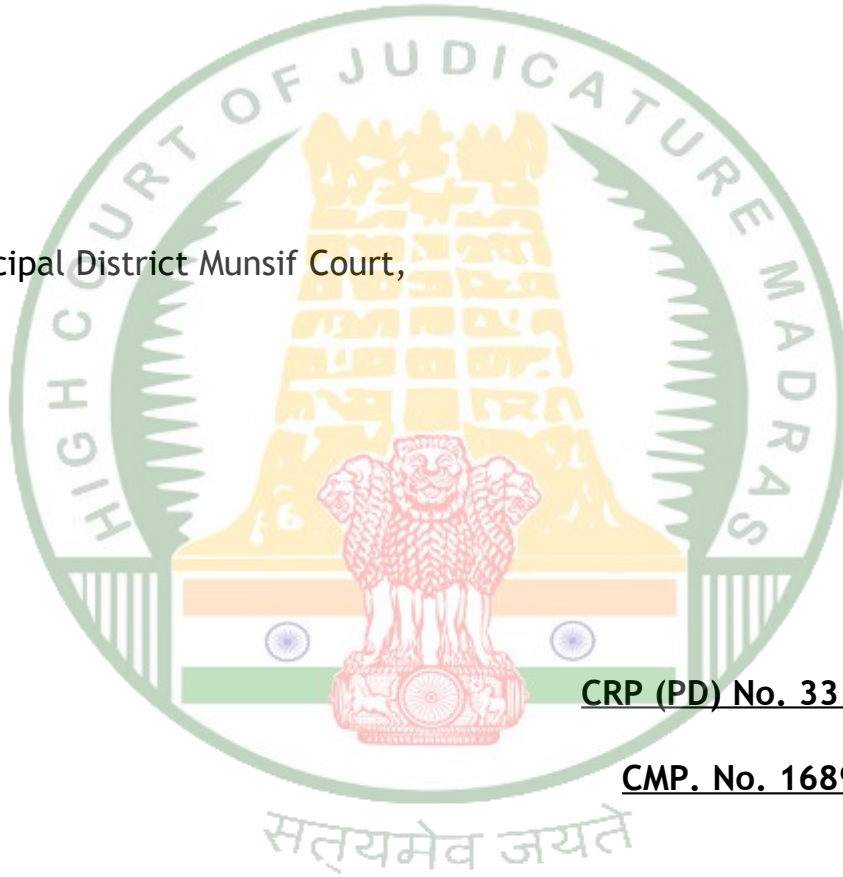
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D. KRISHNAKUMAR J.,

avr

To

The Principal District Munsif Court,
Gingee.



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