

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.396 of 2016
and
C.M.P.No.2145 of 2016

Mrs.Muniyammal
Rep. by her Power Agent
Baskaran

.. Petitioner

Vs

1.M/s.Arun Excello

2.Arun Excello Infrastructure Pvt.Ltd.,
Rep. by its Vice President Corporate
G.Sundar Rajan,
S/o.late S.R.Govindarajan

3.Arun Excello realty Pvt. Ltd.,
Rep. by its Company Secretary
T.K.Krishnan,
S/o.T.K.Keshavan,
1 to 3 having office at
"Bhattad Towers",
No.30/1A, Abdul Razack 1st Street,
Saidapet,
Chennai 15.

4.M/s.L.I.C. Housing Finance Ltd.,
Rep. by its Regional Manager
S.Ramasamy,

Having its Regional & Back Office at
Harrington Chambers,
Block C, No.30/1A,
Abdul Razack 1st Street,
Saidapet,
Chennai.

Mrs.Cherry Ammal (Died)

5.Palayam

6.Maraimalai Nagar Municipality,
Rep. by the Municipality Commissioner,
Maraimalai Nagar Municipality Office,
Chengalpattu Taluk,
Kancheepuram District.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.12.2015 in I.A.No.62 of 2015 in O.S.No.82 of 2012 on the file of the Additional District Judge, Chengalpattu.

For Petitioner : Mr.V.Manohar

For Respondents : Mrs.R.Kamala Rani
(for R.1 to R.3)

Mr.P.Srinivas
(for R.6)

No Appearance
(for R.4 and R.5)

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ORDER

This petition has been filed to set aside the order dated 08.12.2015 passed in I.A.No.62 of 2015 in O.S.No.82 of 2012 on the

file of the Additional District Judge, Chengalpattu.

2. According to the petitioner/plaintiff, the petitioner, represented by her Power Agent one Baskar, filed a suit in O.S.No.82 of 2012 against the respondents/defendants for declaration, permanent injunction and partition on the file of the Principal District Court, Chengalpattu. In the aforesaid suit, the petitioner filed an application in I.A.No.62 of 2015 under Order I Rule 10(2) of CPC to implead Maraimalai Nagar Municipality, represented by the Municipality Commissioner, Maraimalai Nagar Municipality Office, Chengalpattu Taluk, Kancheepuram District as 7th defendant in the suit. The respondents 1 to 3 have filed the counter objecting that they are not a necessary party to the said suit. The Court below dismissed the said application by order dated 08.12.2015. Challenging the said order, the present Civil Revision Petition has been filed by the petitioner.

3. The learned counsel for the petitioner submitted that 2nd and 3rd respondents/defendants have filed a written statement. On the basis of the aforesaid written statement, the petitioner filed the present application praying to implead the proposed party as 7th defendant in the suit. The learned counsel further submitted that the plaintiff being the dominus litus in the suit, the Court below ought to have allowed the application. Therefore, the impugned order passed

by the Court below is liable to be set aside.

4.The learned counsel for respondents 1 to 3 submitted that proposed 6th respondent/7th defendant is not a necessary party in the said suit and the petitioner has failed to state as to whether the proposed 6th respondent/7th defendant is either a necessary party or a proper party and the Court below, rightly dismissed the application stating that the petitioner has not given satisfactory reasons to implead the proposed party as 7th defendant in the suit. Hence, the Civil Revision Petition is liable to be dismissed.

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

6.On a perusal of records, it is seen in the affidavit that since the date of purchase of the property, the 3rd respondent/3rd defendant have been in peaceful possession and enjoyment of the property and as per the approval norms, certain percentage of the property has to be gifted to the local body for putting up amenities for public use and accordingly, 'A' schedule property had been gifted to the Maraimalai Nagar Municipality and hence, the proposed party is a necessary party.

7.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.

8.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, submissions made by the learned counsel for the petitioner and in the light of the decision in ***Devaki Thiyagarajan Vs. Ahamed & Others*** reported in **2015 (4) CTC 293**, wherein, it has been 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."

Hence, this Court finds no reason to interfere with the impugned order passed by the Court below and is inclined to pass the following order:

"(i)The order passed in I.A.No.62 of 2015 in O.S.No.82 of 2012 pending on the file of the Additional District Court, Chengalpattu, dated 08.12.2015, is hereby set aside.

(ii)The Trial Court is directed to implead the proposed sixth respondent as seventh defendant in O.S.No.82 of 2012 and after carrying out the necessary amendment in the suit, it is further directed to dispose of O.S.No.82 of 2012 pending on its file as expeditiously as possible.

(iii)The Civil Revision Petition is allowed.

No order as to costs. Consequently, connected miscellaneous petition is closed."

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Index : Yes/ No

Speaking order/ Non speaking order
cla

To

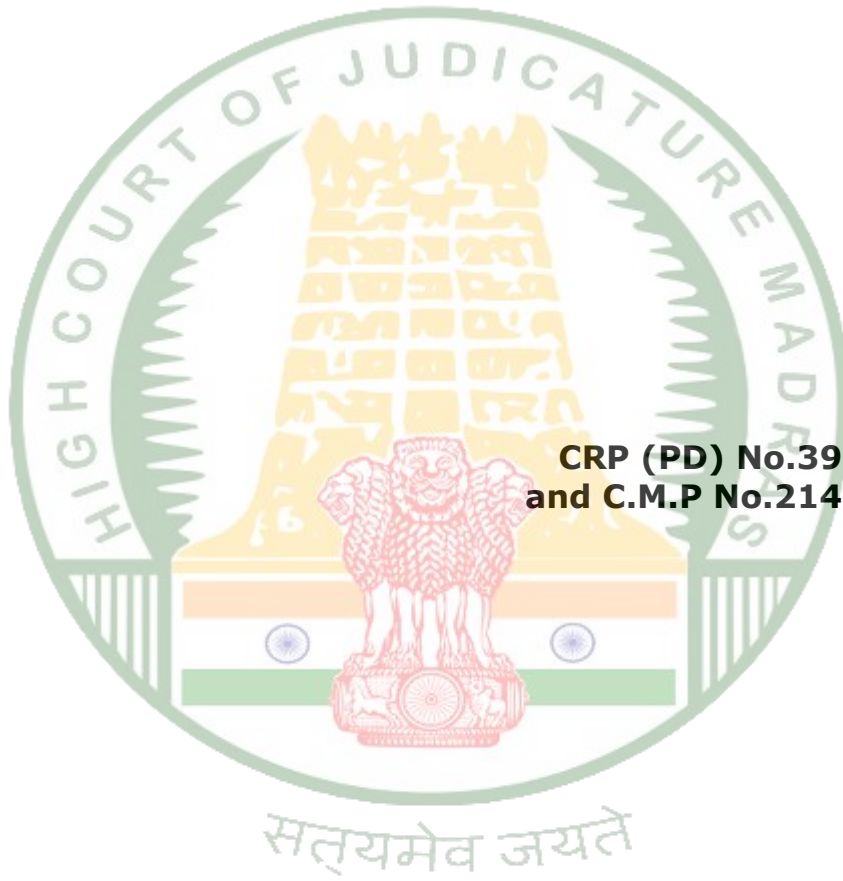
The Principal District Judge,
Chengalpattu.



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D. KRISHNAKUMAR J.,

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64. Mr.R. Thiagrajan, 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. 65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y. Eqbal, as under:-

"Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation.

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.

71a.

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.

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67. On coming to the given case on hand, after filing the application by the appellant/proposed 5th plaintiff seeking for her impleadment, the respondents 2 to 5/plaintiffs 1 to 4 have brought down their volume and apparently have allowed the appellant/proposed 5th plaintiff to speak on their behalf as well as on her behalf.

68. On the other hand, the first respondent/proposed 5th defendant alone has claimed that he had purchased the plaint 'B' Schedule property from the 8th respondent/D3.

69. According to him, the present suit in C.S.No.462 of 1999 is hit by the doctrine of res judicata.

71. As afore stated 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. Thiagarajan, 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.

65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y. Eqbal, as under:-

"Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation.

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