

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.52 of 2016 and C.M.P.No.259 of 2016

P.Baskar

... Petitioner/Proposed Party

Vs

1 Varadarajan

2 Sudhakar

3 Premalatha

4 Kalaimani

... Respondents 1 to 4/Plaintiffs

5 Annadurai

6 Jayalakshmi

7 Ramamani

8 Masilamani

9 Maadhu (Died)

10 Muniappan

... Respondents 5 to 10/Defendants

11 Mala

12 Rajesh

13 Vijayalakshmi

14 Karthik

... Respondents 11 to 14/Legal heirs of
the deceased 9th respondent

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This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 13.10.2015 made in I.A.No.435 of 2014 in O.S.No.305 of 2003 on the file of the Subordinate Judge, Dharmapuri.

For Petitioner : Mr.Labrar Md Abdullah
For Respondent No.6 : Mrs.R.T.Sundari
For Respondent No.7 & 10 : Mr.G.Mohamed Aseef
For Respondents 1 to 4,
5, 8, 11 to 14 : No appearance

ORDER

According to the petitioner, the respondents 1 to 4 have filed a suit in O.S.No.305 of 2003 before the Sub Court, Dharmapuri for declaration and permanent injunction against the respondents 5 to 10. Pending suit, the petitioner has purchased the suit property by way of the registered sale deed, dated 5.12.2008 executed by the plaintiffs/respondents 1 to 4. Thereafter, the petitioner has filed an application in I.A.No.435 of 2014 to implead himself as 5th plaintiff in the aforesaid suit. The court below dismissed the said application. Challenging the said order, the petitioner has preferred the present Civil revision petition before this Court.

2 According to the learned counsel for the petitioner, since the petitioner has purchased the suit property and he is in possession of the said property, he is necessary party in the suit. The court below without considering the case of the petitioner dismissed the said application. Further, the respondents 1 to 4 has no objection for allowing the application. The court below erroneously dismissed the application by stating that the petitioner

ought to have filed separate suit against the respondents. Therefore, the order passed by the court below is liable to be set aside.

3 The learned counsel for the contesting respondents would submit that the trial court has dismissed the said application by holding that the petitioner has to file an independent suit and no cause of action arises for the petitioner to implead in the present suit. Therefore, the civil revision petition filed by the petitioner cannot be entertained and the same is liable to be dismissed.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5 It is the case of the petitioner that he has purchased the property by registered sale deed, dated 5.12.2008 from the respondents 1 to 4/ plaintiffs 1 to 4. The petitioner has filed the present application by stating that the plaintiffs 1 to 4 contested the case. Pursuant to the purchase of the property, petitioner is also a necessary party in the aforesaid suit. The judgment and decree passed in the aforesaid suit is also binding on the petitioner. Therefore, in order to avoid multiplicity of proceedings and to resolve the issues in the presence of the parties concerned, the petitioners are

necessary parties in the suit. In an identical case, the Division Bench of this Court in DEVAKI THIYAGARAJAN VS. AHAMED & 8 OTHERS [(2015 4 CTC 293)] held as under:

"60. The learned counsel appearing for the respondents 2 to 5/plaintiffs 1 to 4 has submitted that he did not want to say anything as the respondents 2 to 5/plaintiffs 1 to 4 had sold the property in favour of the appellant/proposed 5th plaintiff.

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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, 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.

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."

The aforesaid decision is squarely applies to the facts of the present case.

Therefore, this Court has no hesitation to set aside the impugned order.

6 In the facts and circumstances of the case and the decision of this Court cited supra, the order passed by the learned Subordinate Judge, Dharmapuri, dated 13.10.2015 in I.A.No.435 of 2014 in O.S.No.305 of 2003 is set aside.

D.KRISHNAKUMAR, J.

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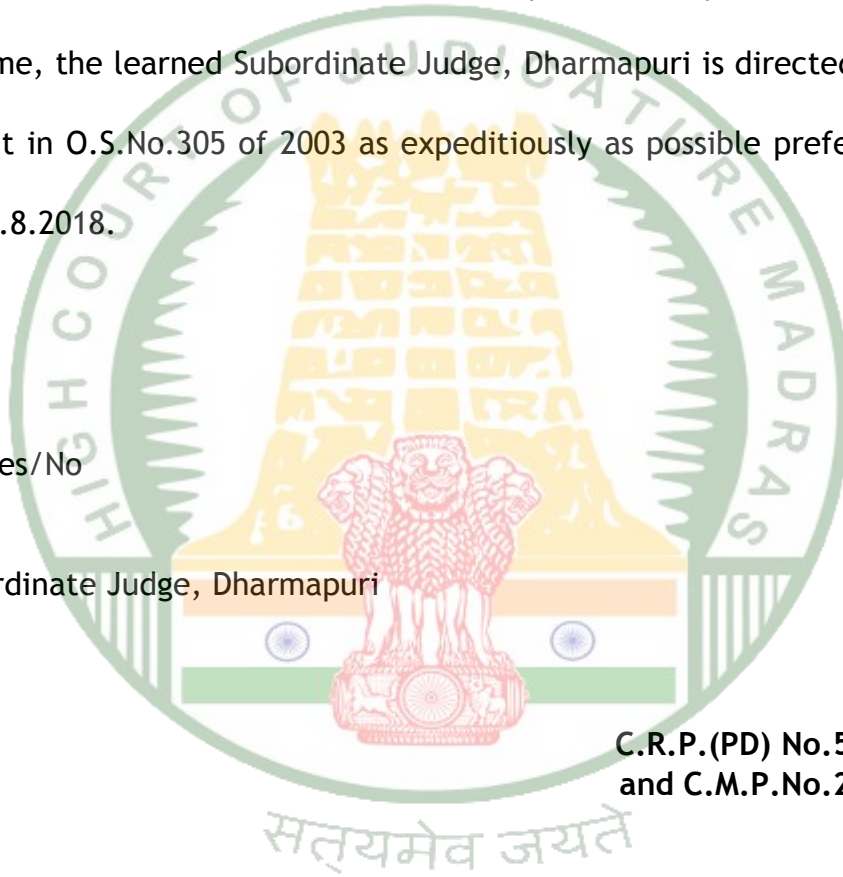
7 In fine, the Civil revision petition is allowed. No costs.

Connected miscellaneous petition is closed.

8 Counsel for both side seeks direction to the court below to dispose of the suit within a time frame as may be fixed by this Court. In view of the same, the learned Subordinate Judge, Dharmapuri is directed to dispose of the suit in O.S.No.305 of 2003 as expeditiously as possible preferably on or before 30.8.2018.

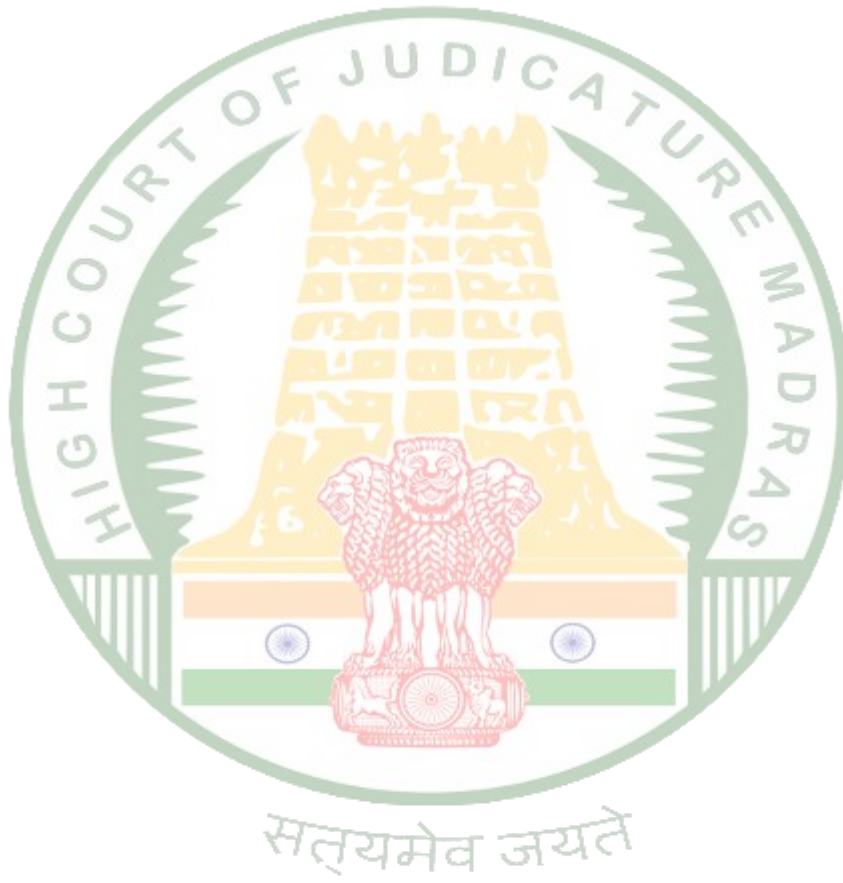
8.03.2018

Index: Yes/No
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To
The Subordinate Judge, Dharmapuri



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