

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.303 of 2013
and M.P.Nos.1 and 2 of 2013

Metroplast Industries
Rep. By its proprietor
T.Thirunavukkarasan,
Office at No.16(NP) Developed Plot,
Industrial Estate,
Ekkattuthangal,
Chennai 600 032

.. Petitioner

Vs.

1.M/s.Essor Industries,
represented by its Managing Partner
16(NP) Developed Plot,
Industrial Estate,
Ekkattuthangal,
Chennai 600 032.

2.T.S.R.Pandurangan

3.P.Vasantha

4.T.Sujatha

5.C.N.Malathi

6.T.P.Kavitha

7.D.Banumathiammal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of
Constitution of India to set aside the fair and decretal order dated

07.12.2012 made in I.A.No.8150 of 2012 in O.S.No.1899 of 2012 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Marudhachalamurthy

For R1 to R4 : M/s.Jenifer
for Mr.S.William

For R5 & R6 : Not ready in notice

For R7 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 07.12.2012 made in I.A.No.8150 of 2012 in O.S.No.1899 of 2012 on the file of the VIII Assistant City Civil Court, Chennai.

2.The petitioner is the plaintiff, respondents 1 to 6 are the defendants and 7th respondent is a third party in O.S.No.1899 of 2012 on the file of the VIII Assistant City Civil Court, Chennai. The petitioner filed the said suit for permanent injunction restraining the respondents 1 to 6 from interfering with the peaceful possession and enjoyment of the 'A' schedule property and permanent injunction restraining the respondents 1 to 6 from alienating or encumbering the 'B' schedule property.

3.The petitioner filed I.A.No.8150 of 2012 under Order 1 Rule 10(2) of C.P.C to implead the 7th respondent herein as the 7th defendant in the suit. According to the petitioner, suit property belongs to first respondent partnership firm. Originally, the respondents 2 and 7 are partners and subsequently, respondents 3 to 6 were inducted as partners. The 7th respondent retired from partnership firm. In such circumstances, the respondents 2 to 6 were running the firm. Now the petitioner has come to know that 7th respondent is still shown as partner of first respondent partnership firm. Therefore, she is necessary and proper party to the suit. If she is not impleaded, the suit will be hit by non-joinder of necessary parties.

4.The second respondent filed counter affidavit which was adopted by respondents 3 to 6 denying all the averments. The petitioner is wilful defaulter in payment of rent. The respondents 1 to 6 filed R.C.O.P.No.1408 of 2012 against the petitioner for eviction on the ground of wilful default. The intention of the petitioner is only to file vexatious petition. The 7th respondent retired from partnership firm. The 7th respondent is not continuing as partner and therefore, she is not necessary and proper party. The petitioner

has filed the present application only to drag on the proceedings and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit, counter affidavit and the documents marked in I.A.No.727 of 2012, especially the document Nos.14 and 18, dismissed the application holding that 7th respondent is not a partner of the first respondent firm, no cause of action has arisen against the 7th respondent and no averments has been made that 7th respondent also interfered with the possession of the petitioner.

6.Against the said order of dismissal dated 07.12.2012 made in I.A.No.8150 of 2012 in O.S.No.1899 of 2012, the petitioner has come out with the present Civil Revision Petition.

7.Heard the learned counsel for the petitioner as well as the respondents 1 to 4 and perused the materials available on record. Though notice has been served on the 7th respondent and she entered appearance through counsel, there is no representation for her either in person or through counsel.

8.The petitioner is seeking to implead the 7th respondent as 7th defendant in the suit on the ground that 7th respondent continued to be partner in the first respondent firm. She is shown as partner in the respondents' partnership concerned documents. On the contrary, the respondents 1 to 6 in the counter affidavit filed in support of the present application has stated that 7th respondent has retired from partnership firm. The respondents in I.A.No.727 of 2012 has filed and marked documents. As per the Document No.14 dated 19.12.1988, the 7th respondent was shown as partner of the first respondent firm. On the other hand, as per the subsequent unregistered document No.18, it is stated that 7th respondent has retired from partnership firm. The learned Judge considering these two documents and nature of relief sought for in the suit and no allegations are made against the 7th respondent with regard to interference, dismissed the application. In the affidavit, it is pertinent to note that petitioner has not made any averments that 7th respondent is trying to alienate the suit property or encumber the suit property.

9.The learned Judge has properly appreciated the averments in the affidavit, counter affidavit, documents filed in I.A.No.727 of 2012 and averments in the plaint and relief sought for in the suit

and dismissed the application, holding that 7th respondent is not proper party to the suit. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 07.12.2012 made in I.A.No.8150 of 2012 in O.S.No.1899 of 2012.

10.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.03.2018

Index :: Yes/No
gsa

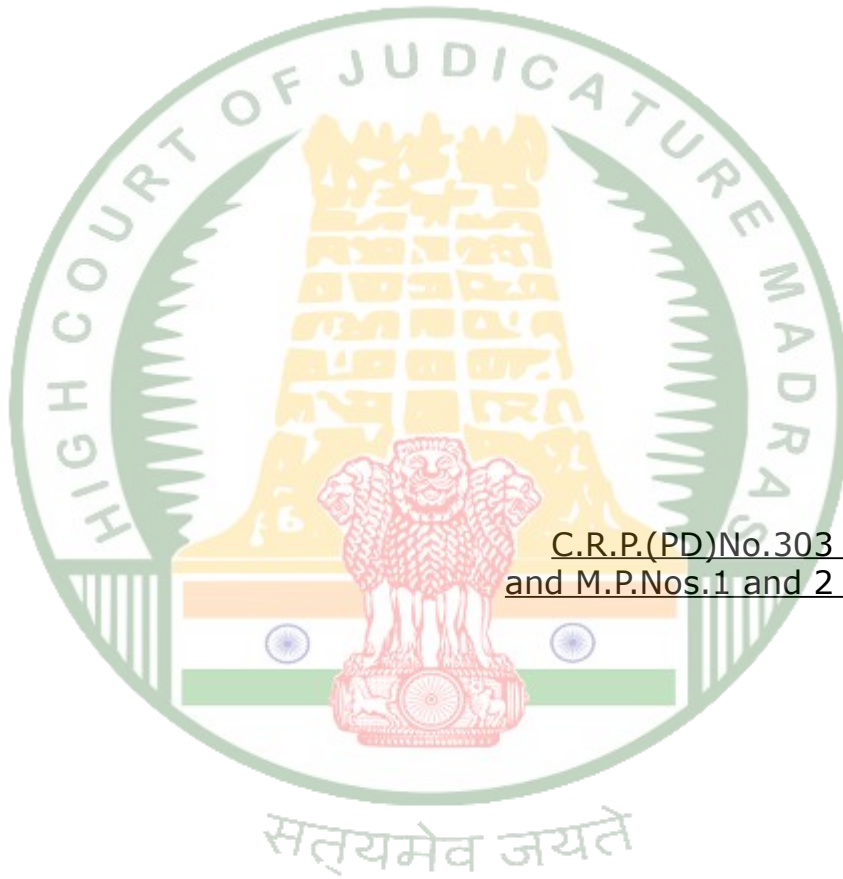
To

The VIII Assistant Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI,J.

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