



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.07.2018

DELIVERED ON : 22.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.447 of 2018

CMP (MD) NO.1958 OF 2018

1.Nagarethinam

2.P.Mohammed

3.M.Alavudeen

.. Petitioners

vs

1.Mangalam

2.Mary Valsala

3.Shanmuga Valayutha Asari @ Thangappan

.. Respondents

Revision filed under Article 227 of Constitution of India against the Fair and Decretal Order dated 13.10.2017 passed in I.A.No.275 of 2017 in O.S.No.264 of 2010 on the file of the Principal Subordinate Judge, Nagercoil.

For Petitioners : Ms.J.Anandhavalli

For Respondents : Mr.R.Devaraj (for R2)

No Appearance (for R1 & R3)

ORDER

This revision is directed against the order of the learned Principal Subordinate Judge, Nagercoil dated 13.10.2017 made in I.A.No.275 of 2017 in O.S.No.264 of 2010, dismissing the petition filed under Order 1, Rule 10(2) CPC.

2. I heard Ms.J.Anandhavalli, learned counsel for the petitioners and Mr.R.Devaraj, learned counsel for the 2nd respondent and also perused the materials available on record. No



representation on behalf of the respondents 1 and 3.

3. The petitioners are the plaintiffs in the suit. The plaintiffs have filed the suit for declaration declaring the title of the plaintiffs over the suit property and for recovery of possession and also mesne profits. The plaintiffs have also sought mandatory injunction directing the defendants to remove the encroachments, all constructions and building from the suit property and also prohibitory injunction restraining the defendants from further encroaching, trespassing, constructing any structure or interfere or otherwise doing anything prejudicial to the plaintiffs' rights over the suit property including burial of any dead body in the suit property.

4. Pending suit, the plaintiffs have filed I.A.No.275 of 2017 seeking to implead the third respondent herein as defendant No.3 in the suit alleging that in the written statement of the defendants 1 and 2, it has been stated that the third respondent got a right to use the suit property as pathway and therefore, he is a necessary party to the suit. Therefore, for effective adjudication of the suit, the third respondent has to be impleaded as defendant No.3 in the suit.

5. It appears that the plaintiffs have also filed I.A.No.276 of 2017 to implead one Kanagam as 4th defendant in the suit. Before the trial Court both the petitions were heard together and the trial Court dismissed both the petitions. As against the order passed in I.A.No.276 of 2017, no revision has been filed. The present revision is directed only against the order passed in I.A.No.275 of 2017.

6. The trial Court dismissed I.A.No.275 of 2017 by observing that there was no whisper anywhere in the averments with regard to the third respondent and the party can be construed as a proper and necessary party when no proper adjudication can be given in his absence. It was also observed that no cause of action has been shown against the third respondent and also there was no mention about the proposed third respondent as he had any right or dispute over the suit property.

7. The grievance of the petitioners seeking to implead the third respondent in the suit is that in the written statement the defendants 1 and 2 have stated that the third respondent got right to use the suit property as pathway and therefore, he is a necessary party.

8. As rightly held by the trial Court since one of the prayers in the suit is for recovery of possession of the suit



property, which is admittedly, in the possession of the defendants, it is clear that the real dispute qua the suit property is between the plaintiffs and the defendants.

9. There is also no whisper in the plaint with regard to the proposed third respondent Shanmuga Velayutha Perumal Asari @ Thankappan. No cause of action has been shown by the plaintiffs qua the third respondent as he had any right or dispute over the suit property. Therefore, as rightly held by the trial Court, in the absence of the third respondent, the suit can be adjudicated.

10. The preamble of the impugned order states that the proposed third respondent was represented by the same advocate who appeared for the defendants 1 and 2. Since the defendants 1 and 2 themselves stated that the real dispute is between the plaintiffs and the defendants and it is not necessary to implead the third parties to the suit, I am of the view that the trial Court was right in dismissing I.A.No.275 of 2017 as the plaintiffs were kept silent for all along and belatedly filed petition to implead the third respondent as defendant No.3 in the suit.

11. It appears that as per the plaint, the suit survey number is 2478, whereas in the written statement of the defendants, it has been stated that the third respondent has been given 5 cents in Old Survey No.2478, 2479 and 2480 D. Since the real dispute is between the plaintiffs and defendants and no cause of action has been shown against the third respondent, this Court feels that it is not necessary to implead the third respondent as defendant No.3 in the suit and without his presence, the suit can be adjudicated.

12. No valid grounds have been made out to interfere with the order of the trial Court. I do not find any illegality in the order of the trial Court warranting interference under Article 227 of the Constitution of India and the Civil Revision Petition is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, CMP(MD)No.1958 of 2018 is also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-III)



The Principal Subordinate Judge,
Nagercoil.

+1 CC To MR.R.DEVARAJ, Advocate SR. NO.91110

+1 CC To MR.J.ANANDHAVALLI, Advocate SR. NO. 91114

order made in
C.R.P. (MD) (PD) No.447 of 2018
22.10.2018

VS

TR/SKN/SAR-III (13.11.2018) 4P 4C