



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 31.08.2018
DELIVERED ON : 01.10.2018

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No. 1762 of 2015
and
M.P. (MD) No. 1 of 2015

N. Nachyappan

..Revision Petitioner/
Defendant

Vs.

1. Pandiyan

..1st Respondent/Plaintiff

2. C. Nachiappan

..2nd Respondent/3rd Party

Prayer : This Civil revision petition is filed under Section 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 04.02.2015 in I.A.No.329 of 2014 in O.S.No.98 of 2013 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi and set aside the same.

For Petitioner : Mr.V.R.Shanmuganathan
For Respondent No.1: Mr.R.Sundar Srinivasan
For Respondent No.2: No Appearance

ORDER

Heard Mr.V.R.Shanmuganathan, learned counsel appearing for the petitioner and Mr.R.Sundar Srinivasan, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the fair and decreetal order dated 04.02.2015 in I.A.No.329 of 2014 in O.S.No.98 of 2013 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

3.The first respondent herein is the plaintiff and the petitioner herein is the defendant in the suit. The first respondent filed the suit in O.S.No.98 of 2013 against the petitioner for declaration and permanent injunction. The first respondent filed a petition in I.A.No.329 of 2014 to implead the second respondent as a party to the suit. The petition is allowed by the trial Court. Against the order, the petitioner has come forward with the revision petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On the side of the petitioner, it is stated that it is

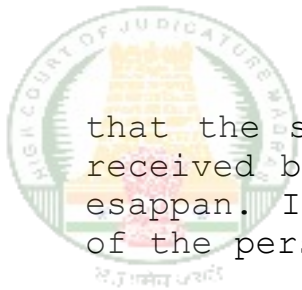


wrong to state that in the written statement filed by this petitioner in paragraph no.4, it is stated that the suit first schedule property belonged to the second respondent. The petitioner has stated in the paragraph no.8 that the suit first schedule property belonged to one C.Natchiyappan and Natchiyappan who is dead. Moreover, in the written statement paragraph no.17, the petitioner has stated that Natchiyappan son of Chinnapayal is dead and his legal heirs are enjoying the property. But the respondents herein has filed a petition to implead the deceased Natchiyappan son of Chinnapayal. Son of Natchiyappan has mistakenly received the summons and Natchiyappan son of Chinnapayal died 17 or 18 years ago and the petition is to be dismissed. It is further stated that in the affidavit filed by the second respondent in I.A.No.329 of 2014, it is stated that summons were received by one Natchiyappan son of Natchiyappan by mistake. It is further stated that Natchiyappan son of Natchiyappan has filed an affidavit stating that the name of his father is Natchiyappan @ esappan and the Advocate without verifying the facts obtained his signature in the vakalath and after he met the Advocate for preparing the written statement, the Advocate came to know that Natchiyappan is already died.

5.On the side of the petitioner, it is stated that without verifying the affidavit and without verifying the death certified along with the affidavit, the Court has wrongly come to a conclusion and passed an order that Natchiyappan is dead and only the legal heirs of Natchiyappan is to be impleaded.

6.On the side of the respondents, it is stated that Natchiyappan is a common name in that area and summon was received by a person who is a son of one such Natchiyappan. Whether the relevant Natchiyappan is dead or alive is to be decided only after the trial. The nick name of Natchiyappan is stated as Karuppu. But in the third party affidavit, the nick name of Natchiyappan is esappan. The identity of the deceased Natchiyappan is in question and moreover, the petitioner is claiming right only over the the second and third item of the suit properties and the said Natchiyappan is related only to the first item of the suit property. It is prayed that the matter can be decided at the time of trial.

7.A perusal of the records reveals that in the plaint paragraph no.4, the suit first item of the property was said to have been assigned to Natchiyapan son of Chinnapayal. The suit items 2 and 3 of the properties were assigned to Natchiyappan son of Natchiyappan @ Alampatti Karuppu. In the written statement paragraph no.4, it is stated that the suit schedule 2 and 3 properties belonged to Natchiyappan son of Natchiyappan. It is ~~stated that the~~ defendants father is not having a nick name as Karuppu. It is clear that the name of Natchiyappan is a common name in that particular area. The third party affidavit reveals



that the summon sent to one Natchiyappan son of Natchiyappan was received by another Natchiyappan who is the son of Natchiyappan @ esappan. It clear that there is some confusion regarding the name of the person who received the summons.

8.It is true that there is some discrepancies in the name of the proposed defendant. The father of the person who received summons is esappan @ Natchiyappan whereas the name of the father of the proposed defendant is Karuppu @ Natchiyappan. There is possibility for both the names to denote different persons.

9.The trial Court has to get an affidavit and statement from the newly impleaded third party whether he is claiming any right in the suit property. The lower Court has to issue fresh notice to the proposed defendant by stating the nick name and official name of the father.

10.In the circumstance, the order of the lower Court is set aside and the lower Court is directed to reopen the I.A. Petition and to issue fresh notice to proposed party and to decide whether the person to be impleaded is the necessary party and then to pass a fresh order.

11.With the above directions, this Civil Revision Petition is disposed of. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1.The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

+ 1 CC TO MR.V.R.SHANMUGANATHAN , ADVOCATE IN SR NO.88358
+ 1 CC TO MR.R.SUNDAR SRINIVASAN, ADVOCATE IN SR NO.87873

MRN

BU/PM/SAR-III :30.10.2018 : 3P/4C

C.R.P. (PD) (MD)No.1762 of 2015
01.10.2018