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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.07.2018

DELIVERED ON : 22.10.2018

CORAM

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

C.R.P. (MD) (PD) No.670 of 2015

and

M.P.No.1 of 2015

L.Nirmala

.. Petitioner/1st Respondent/Plaintiff

vs

1.Iyyappan

2.Chandra

3.The State of Tamilnadu,
rep. by the District Collector,
Nagercoil,
Kanyakumari District.
Office at Nagercoil Agasteeswaram Taluk,
Kanyakumari District.

... Respondents 1 to 3/
Respondents 2,3 & 4/
Defendants 1 to 4

4.C.Muthukumar

5.T.Shunmugam Pillai

6.A.Perumal

(Notice to R4 and R6 are not
Necessary because impugned IA
was dismissed against those persons)

.. Respondents 4 to 6/
Petitioners 1 to 3/
Defendants 4 to 6

Revision filed under Article 227 of Constitution of India
against the fair and decreetal order dated 13.02.2015 passed in
I.A.No.213 of 2012 in O.S.No.309 of 2012 on the file of the learned
District Munsif cum Judicial Magistrate Court, Boothapandi.

For Petitioner : Mr.K.P.Narayana Kumar



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For Respondents : Mr.Aayiram K.Selvakumar
Addl. Government Pleader (for R3)
Mr.V.Meenakshisundaram
(for R5)
No Appearance (for R1, R2, R4 & R6)

ORDER

This revision has been filed by the petitioner challenging the order dated 13.2.2015 passed in I.A.No.213 of 2012 in O.S.No.309 of 2012 on the file the District Munsif-cum-Judicial Magistrate Court, Boothapandi.

2. The petitioner is the plaintiff and the respondents 1 to 3 are defendants in the suit. The respondents 4 to 6 are the proposed defendants in the suit.

3. The respondents 4 to 6 have filed I.A.No.213 of 2012 under Order 1, Rule 10 CPC to implead them as defendants 4 to 6 in the suit. According to them, the deponent T.Shunmugam Pillai was the resident of Aralvoimozhi and he was filing the petition for himself and on behalf of Muthukumar and A.Perumal. In his affidavit, the deponent T.Shunmugam Pillai stated that his house was situated on the western side of Aadu Mattu Kulam Odai, which runs north to south and in front of the village temple situated on the "B" schedule property. It is stated that the plaintiff had filed the suit with malafide intention and ill-will to pass through the temple property to her property, which was described as "A" schedule. According to the deponent, no pathway exist as alleged by the plaintiff. It is also stated that the plaintiff and her predecessors were using the stream bund running north to south and the plaint "A" schedule was lying abutting the said stream and also the above stream reaches Avaram Pottu Kulam. Now the Government has granted patta for the property lying abutting the Avaram Pottu Kulam to the landless people for construction of houses.

4. The main grievance of the respondents 4 to 6 seeking to implead them is that the plaintiff was attempting to put up a culvert hampering the free flow of water which runs through the Aadu Mattu Kulam Odai. Any sort of obstruction on the said Odai would inundate the village during rainy season. Further, the houses situated on the western side of stream bund would be certainly affected. Hence, the respondents 4 to 6 are necessary parties to the suit.



5. Resisting the petition, the plaintiff had filed counter stating that respondent No.4 is a real estate broker who wants to fish out of the confused water and the respondents 5 and 6 are close friends of the 4th respondent. It is stated that the Government has categorically stated that they are the owners of the property and the defendants 1 and 2 were not having any right over the "B" schedule property. The respondents 4 to 6 cannot attribute motives for the acts of the plaintiff and only if a bridge was constructed across the river (Odai) belonging to the Public Works Department, the plaintiff's property can be properly irrigated and improvements can be done. The respondents 4 to 6 were responsible for the hindrances and objections caused by the defendants 1 and 2 and the respondents 4 to 6 have motive against the plaintiff because of her refusal to sell the property to them. Since the plaintiff is the author of the litigation, she does not want the respondents 4 to 6 as defendants in the suit. When the plaintiff does not claim any relief against the respondents 4 to 6, they are unnecessary parties to the litigation. Hence, prayed for dismissal of the petition.

6. The third defendant filed counter stating that the property that was available on the east of "B" schedule is a patta land and its usage was not connected with the Government. The land in R.S.No.79/3 is a Government poramboke land, classified as Koil poramboke and the State is the owner of the "B" schedule and was in possession. Deities were installed in the "B" schedule by some mischievents and portion of the "B" schedule was encroached by one Parvathiammal and the plaintiff and used as a pathway to reach "A" schedule as there was no alternative pathway. No person can claim right over the "B" schedule property and there was no cause of action to file the petition to implead the respondents 4 to 6 as defendants 4 to 6 in the suit.

7. Upon consideration of the rival submissions, the learned District Munsif allowed the petition partly by impleading the 5th respondent as 4th defendant in the suit and as far as the respondents 4 and 6 are concerned, the petition has been dismissed. Aggrieved by the order of impleading the 5th respondent as 4th defendant in the suit, the plaintiff has filed this revision.

8. I heard Mr.K.P.Narayana Kumar, learned counsel for the petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader for the 3rd respondent and Mr.V.Meenakshisundaram, learned counsel for the 5th respondent and also perused the materials available on record. No representation on behalf of the respondents 1, 2, 4 and 6.

9. Assailing the order of the trial Court, the learned counsel for the petitioner submitted that the impleading petition



was erroneously allowed by the trial Court by impleading the 5th respondent as defendant No.4 in the suit. According to the learned counsel, the trial Court failed to analyse that the 5th respondent was having no manner of right over the property and no relief was claimed against the said defendant. Further, the 5th respondent was not necessary party in respect of the controversy involved in the proceedings. He would submit that the trial Court ought to have analysed that the house of the 5th respondent was situated away from the disputed area and he was no way connected with the construction of culvert. The learned counsel further submitted that the temple in "B" schedule property belongs to one family and no other persons including the 5th respondent can claim right over the same. Only on imaginary ground, the trial Court impleaded the 5th respondent as defendant No.4 in the suit.

10. Per contra, the learned Additional Government Pleader for the 3rd respondent submitted that the State is the owner of the "B" schedule property and nobody can claim right over the "B" schedule property. Therefore, the trial Court erred in impleading the 5th respondent as defendant No.4 in the suit.

11. The learned counsel for the 5th respondent submitted that finding that the house of the 5th respondent situated on the western side of Aadu Mattu Kulam Odai, which runs north to south and in front of the temple situated in "B" schedule, the trial Court has rightly impleaded the 5th respondent as 4th defendant in the suit and there is no need to interfere with the order of the trial Court.

12. Admittedly, the unsuccessful respondents 4 and 6 have not filed any revision against the dismissal of the petition.

13. The trial Court allowed the petition qua 5th respondent on the ground that the 5th respondent was residing on the western side of Aadu Mattu Kulam Odai. Finding that if the plaintiff had constructed culvert, the houses situated on the western side would be affected, the trial Court allowed the petition. Since the respondents 4 and 6 have not established their right in the suit, they are not entitled to get themselves impleaded in the suit. On the other hand, the 5th respondent is necessary party to the suit and accordingly, allowed the petition.

14. In her plaint, the plaintiff had sought the following reliefs:

"(a) A decree for declaration be granted declaring that the plaintiff has exclusive right to use the pathway available at a width of 15 feet for a length of 45 feet starting from Aadu mattu kulam Odai and ending in the A schedule property, situated on the



southern side of the Petchiamman temple available in the B schedule property government porambokku land and shown in green colour in the rough plan filed along with the plaint.

(b) A decree for permanent injunction be granted restraining the 1st and 2nd defendant and their men and agents and persons claiming under them from any way interfering in the construction of culvert in Aadu mattu kulam odai as per the order granted by the Tamil Nadu Public Works Department - order No.Letter No.4-130 M/I 1.6 dated 18.2.2005 and from interfering plaintiff's right of using the pathway for his free ingress and egress to the A schedule property through the plaint B schedule property.

(c) Such other relief this court deems fit may be granted on the circumstances of the case.

(d) All the cost of the suit be decreed to be realised from the contesting defendants."

15. The grievance of the 5th respondent is that his house was situated on the western side of Aadu Mattu Kulam Odai runs north to south and in front of the temple situated in the "B" schedule property. If the plaintiff put up culvert, his house and other houses would be affected. Admittedly, the entire "B" schedule property belongs to the State Government and the State Government is the custodian of the "B" schedule property.

16. As rightly held by the trial Court assuming that the plaintiff has right to construct culvert and due to construction of culvert, if the surrounding people like the 5th respondent affected, they have right to oppose construction. Since the house of the 5th respondent situated on the western side of Aadu Mattu Kulam Odai and in front of the temple in "B" schedule, he is necessary party to the suit. Admittedly, the plaintiff has not sought for any relief against the 5th respondent. However, the house of the 5th respondent situated in the "B" schedule, he should necessarily be heard. If the 5th respondent impleaded in the suit, no prejudice would be caused to the plaintiff. For proper adjudication of the suit, the 5th respondent is necessary and proper party to the suit, which the trial Court has rightly done.

17. Since the respondents 4 and 6 have failed to show any record that they are necessary parties to the suit, the trial Court was right in dismissing the petition.

18. For the foregoing reasons, this Court is the view that there is no merit in the revision and no valid grounds have been made out to interfere with the order of the trial Court.



19. In the result, the Civil Revision Petition is dismissed. No costs. It is made clear that this Court has not dealt with the merits of the suit and it is for the respective parties to prove their case. The trial Court is at liberty to decide the suit based on the oral and documentary evidence to be adduced by both sides. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-III)

To

The District Munsif-cum-Judicial Magistrate,
Boothapandi.

+1 CC To MR.K.P.NARAYANA KUMAR, Advocate SR. NO.91551

+1 CC To MR.R.M.SIVAKUMAR, Advocate SR. NO. 91012

order made in
C.R.P. (MD) (PD) No. 670 of 2015
and
M.P.No.1 of 2015
22.10.2018

VS

TR/SKN/SAR-III (22.11.2018) 6P 4C