



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.04.2018

Delivered on: 21.08.2018

CORAM

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

WEB COPY

C.R.P. (MD) (PD) Nos.1744 and 1745 of 2017

and

C.M.P. (MD) Nos.9438 and 9439 of 2017

Malraj .. Petitioner in CRP(MD)No.1744/2017

P.Pooraja .. Petitioner in CRP(MD)No.1745/2017

vs.

Vijayalakshmi .. Respondent in both the CRPs

Prayer in CRP(MD)No.1744 of 2017: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.05.2017 passed in I.A.No.110 of 2017 in O.S.No.152 of 2015 on the file of the Principal District Munsif Court, Tuticorin.

Prayer in CRP(MD)No.1745 of 2017: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.06.2017 passed in I.A.No.1203 of 2016 in O.S.No.151 of 2015 on the file of the Principal District Munsif Court, Tuticorin.

(In both the CRPs)

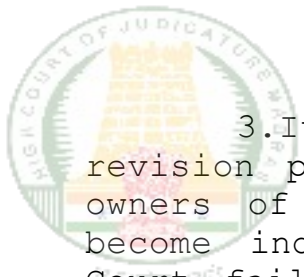
For Petitioners : Mr.M.P.Senthil

For Respondent : Mr.N.Muthu Vijayan

COMMON ORDER

The petitioners in both the revision petitions are one and same, hence this Court by way of a Common Order disposes both the CRPs.

2.In as much as CRP.(MD)No.1744 of 2017 is concerned, it is found to be filed aggrieved over dismissal of petitioner's application made to implead the neighboring owners of the suit Schedule property. At the outset it is seen that the suit on hand is one for Mandatory Injunction filed by the respondent as against the revision petitioner. On further perusal of records it discloses that the proposed parties to be impleaded namely Alpunderaj and Herpet, the defendant had not projected any cause of action.



3. It is the contention of the Learned Counsel for the revision petitioner that an application to implead the adjacent owners of properties lying adjoining to the suit property has become indispensable to setup his defense. However, the Trial Court failed to appreciate the same and thereby disallowed the revision petitioner's claim. In support of his contention, he relied on the following decisions of the Hon'ble Apex Court:

"In the case of Amit Kumar Shaw and Another Vs Farida Khatoon and Another reported in **(2005) 11 Supreme Court Cases 403**, wherein it is held as follows:

"8) On a Combined reading of Order 1 Rule 10, Order 22 Rule 10 of the Code of Civil Procedure and Section 52 of the Transfer of Property Act, can an application for substitution by a subsequent transferee be rejected and the subsequent purchaser be non-suited altogether is the prime question for consideration in these appeals.

9) The object of Order 1 Rule 10 is to discourage contest on technical pleas, and to save honest and *bona fide* claimants from being non-suited. The power to strike out or add parties can be exercised by the court at any state of the proceedings. Under this rule, a person may be added as a party to a suit in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in the suit cannot be completely decided.

10) The power of a court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right."

In 2013 (2) CTC 104 it is held as follows:

"27. In the light of the settled Principles of law on the Doctrine of *lis pendens*, we have to examine the provisions of Order 1, Rule 10 of the Code of Civil Procedure. Order 1, Rule 10 which empowers the Court to add any persons 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. Order 1, Rule 10 reads as under:



Owners have not made any resistance to the Plaintiff in using the common Cart-Track. Therefore, the plea of the Defendants that the suit is bad for non-jointer of the adjoining Land owners falls to the ground".

6. On hearing upon rival submissions and on perusal of the records, this Court find that the respondent herein has filed the instant suit for mandatory injunction against the Revision Petitioner and in such case it is for the respondent to prove the alleged trespass into the suit property. Therefore in a condition that the respondent had not chosen to implead the said Mr. Arputharaj and Mr. Herpet, this Court is of the firm view that the proposed parties are neither necessary nor proper parties to the suit as no relief is being claimed as against them. Further as rightly pointed out by the learned trial judge that if at all the revision petitioner intend to examine his neighbors i.e, the proposed parties, he could take out a witness summon to them and could examine them.

7. In view of the discussion made above, this Court is of the opinion that the adjoining land owners need not be impleaded as parties defendants to the suit and without their presence the suit could be adjudicated upon. Hence, I do not find any merits in this CRP and therefore the order of the learned Trial judge is not required interference by this Court.

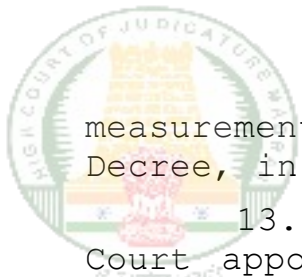
8. In the result, the civil revision petition in CRP(MD) No.1744 of 2017 is dismissed and the order and decree made in I.A.No.110 of 2017 in O.S.No.152 of 2015 dated 19.05.2017 is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

9. Coming to CRP(MD) No.1745 of 2017 it is found to be filed as against an order of allowing respondent's/ plaintiff's amendment application to amend the plaint "B" schedule property.

10. It is the argument of the Learned Counsel for the revision petitioner that amendment allowed would change the extent of "B" schedule property and it will introduce new cause of action and will alter the character of the suit. Accordingly he submitted that the Trial Court should not have allowed the Amendment Application merely relying upon the report of the Advocate Commissioner.

11. It is his further contention that the present amendment application as being filed by the plaintiff on the strength of the report filed by the Advocate Commissioner in respect of the measurement of Suit "B" schedule property.

12. Whereas, the learned Counsel for the respondent submits <https://hcservices.ecourts.gov.in/hcservices/> that since the respondent / plaintiff filed the instant suit for mandatory injunction, it is his duty to mention the exact



measurement of Suit 'B' schedule property enabling him to execute Decree, in case of his success.

13. In actual at the instance of the plaintiff, the Trial Court appointed Advocate Commissioner and his report came to be filed referring as that of the measurement mentioned in the suit "B" schedule property. According to the report of the Advocate Commissioner, the Suit "B" schedule property measure 4.8 meter East- West measurement and 9.0 meter the South- North. Therefore it necessitated the respondent herein to file an application to amend the "B" schedule property.

14. Admittedly the suit on hand is a suit for mandatory injunction seeking to demolish an alleged encroachment made by the Revision Petitioner in the suit "B" schedule property. If the suit stand decreed in favor of the Plaintiff /Respondent herein, then the execution of Mandatory Injunction would be possible only if a proper measurement is ascertained.

15. Again it is open to the Revision Petitioner to prove his case by producing relevant documents in respect of the measurement of "B" schedule property. Therefore the Revision petitioner cannot challenge the amendment allowed by the Trial Court. In fact the Learned Trial Judge has rightly held that such an amendment is necessary to decide the relief of mandatory injunction. More so, the amendment sought neither change the nature of the suit nor introduces a new case nor proposes a fresh cause of action.

16. In view of the same, this Court did not find any irregularity and infirmity over the impugned order challenged in this Civil Revision Petition. In fine, I do not find any merits in this Civil Revision Petition in CRP(MD)No.1745 of 2017 and the same is deserved dismissal, accordingly it is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Principal District Munsif Court,
Tuticorin.

+2cc to Mr.M.P.Senthil, Advocate Sr.No.79644,79643

VSV

VB/RSK/SAR1/17.09.2018/5P/4C

order made in

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