



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P. (PD) (MD) No.2417 of 2016

and

C.M.P. (MD) No.11397 of 2016

Sivaprakasam

S/o.S.Sankara Subbu,

Managing Trustee,

M/s.Mana.Puna.Sana Siva Sri.

Sivasankara Vinayagar Koil Trust,

Aruppukkottai.

... Petitioner/1st Respondent/Plaintiff

-vs-

1.Siddalingammal

2.Mangammal

3.Subbulakshmi

4.Chinna Subbulakshmi

5.Subburaj

6.Aathilakshmi

... Respondents 1to6/Petitioners/
Proposed Defendants 6to11

7.Ramalinga Sowdambigai

Devasthanam, Represented by its

Trustee, Pudukkadai Veedhi,

Aruppukkottai.

... 7th Respondent/2nd Respondent/
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair order and decreetal order of the learned Subordinate Judge, Aruppukkottai passed in I.A.No.63 of 2014 in O.S.No.117 of 2011 on his file dated 06.09.2016 and dismiss the petition.

For Petitioner : Mr.S.Parthasarathy

For R1 to R6 : Mr.P.Ganapathi Subramanian

For R7 : Mr.M.Mahaboobathi
for Ajaml Associates**ORDER**

The revision petitioner herein instituted O.S.No.117 of 2011 on the file of the Sub Court, Aruppukkottai for directing the 7th respondent herein to hand over the suit property and administration of the same to the plaintiff.



"17.The expression "to settle all questions involved" used in Order 1 Rule 10(2) of the Code is susceptible to a liberal and wide interpretation, so as to adjudicate all the questions pertaining to the subject-matter thereof. Parliament in its wisdom while framing this rule must be held to have thought that all material questions common to the parties to the suit and to the third parties should be tried once for all. The court is clothed with the power to secure the aforesaid result with judicious discretion to add parties, including third parties. There cannot be any dispute that the party impleaded must have a direct interest in the subject-matter of litigation. In a suit seeking cancellation of sale deed, as mentioned supra, a person who has purchased the property and whose rights are likely to be affected pursuant to the judgement in the suit is a necessary party, and he has to be added. If such purchaser has expired, his legal representatives are necessary parties."

4. This Court is of the view that the order impugned in the revision petition is liable to be set aside. This is for more reasons than one. As rightly pointed out by the learned counsel for the revision petitioner, the suit was filed under Section 28 of the Tamil Nadu Court Fess and Suit Valuation Act.

Section 28 of the said Act reads as under:-

"28.Suits relating to trust property:- In a suit for possession or joint possession of trust property or for a declaratory decree, whether with or without consequential relief in respect of it, between trustees or rival claimants to the office of trustee or between a trustee and a person who has ceased to be a trustee, fee shall be computed on one fifth of the market value of the property subject to a maximum fee of or where the property has no market value, on provided that, where the property does not have a market value, value for the purpose of determining the jurisdiction of Courts shall be such amount as the plaintiff shall state in the plaint."



Since the suit has been filed in terms of Section 28 of the Act, the scope of the suit cannot be enlarged so as to bring in the rights of third parties.

7. At the same time, the apprehension expressed by the learned counsel for the respondents 1 to 6 cannot be brushed aside. It is true that the revision petitioner being dominus litus, can choose the person, against whom he seeks relief. In this case, the revision petitioner seeks relief only against the 7th respondent herein. But any decree passed in O.S.No.117 of 2011 cannot be put against the respondents 1 to 6.

8. With this observation, this Civil Revision Petition is allowed and the order impugned in this petition is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The Subordinate Judge,
Aruppukkottai.

+1CC to Mr.S.Parthasarathy, Advocate, SR.No.78658
+1CC to M/s.Ajaml Associates, Advocate, SR.No. 78904

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