

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.1237 of 2011 and
M.P.No.1 of 2011

- 1.T.Bakthavathsalam
- 2.Ammaniammal
- 3.T.Saradhamani
- 4.N.Nagarajan
- 5.M.L.Palanisamy
- 6.Uma Rani Palanisamy
- 7.M.N.Manivachagam
- 8.A.M.Ilangovan
- 9.K.Karthikeyan
- 10.M.Dhanalakshmi

..

Petitioners

versus

- 1.K.Parthasarathy
- 2.Kamalam
- 3.The Executive Officer,
Kalapatti Town Panchayat,
Coimbatore - 641 035.
- 4.T.Balasundaram
- 5.C.Neelaveni

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Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.11.2010 made in I.A.No.414 of 2010 in O.S.No.2 of 1998 on the file of the learned II Additional District Munsif, Coimbatore.

For Petitioners : Mr.J.Hariharan
 For Respondent No.1 : Mr.K.Radhakrishnan
 For Respondent Nos.2 & 3 : No Appearance
 For Respondent Nos.4 & 5 : Given up on 27.04.2011

ORDER

This Civil Revision Petition has been filed against the order dated 23.11.2010 made in I.A.No.414 of 2010 in O.S.No.2 of 1998 on the file of the learned II Additional District Munsif, Coimbatore.

2. The Interlocutory Application in I.A.No.414 of 2010 was filed by the revision petitioners, under Order 1 Rule 10(2) of the Code of Civil Procedure, seeking an order to implead the third party as one of the defendant in the suit.

3. The suit has been originally laid by the plaintiffs against the defendants for declaring that the 20 feet width common pathway shown in the plaint as a common pathway and also for the mandatory injunction for removing the encroachments made by the defendants. When the suit was in argument stage, at that time, the above mentioned application has been filed by the third party to implead himself as one of the parties in the suit on the ground that he has 1/5th share in the common pathway. The trial Court has allowed application, as against which, the present Revision came to be filed by the petitioners herein.

4. The learned counsel appearing for the revision petitioners

<http://www.judis.nic.in> would submit that if at all the third party has any right in the property, it is for

him to establish in a separate suit. The suit itself in respect of the pathway, the third party cannot be impleaded as a matter of right. It is for the plaintiffs to take a decision, as against whom, the relief is necessary. However, the trial Court has simply ordered impleadment and hence, they prayed for interference.

5. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the first respondent and also perused the materials available on record.

6. There is no dispute that the application has been filed at the stage of fag end of trial to implead himself as one of the defendants on the ground that he has 1/5th share in the suit property. The suit itself filed to declare the portion shown as "ABCD" as a common pathway and for mandatory injunction. The plaintiffs being dominus litus are entitled to choose person or persons against whom the relief is necessary and therefore, as a matter of right the third party cannot be impleaded himself. The impleading application has been filed at the stage of fag end of trial even assuming that the proposed party has any right in the suit property, he has to establish the same by way of filing a separate suit. As long as no relief whatsoever claimed against the impleaded respondent even decree is passed, the same will not bind on him in the suit. Hence, this Court is of the view that the Revision has to be allowed

and the order of the trial Court dated 23.11.2010 has to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order of the trial Court passed in I.A.No.414 of 2010 in O.S.No.2 of 1998 dated 23.11.2010 is hereby set aside. The trial Court is directed to dispose of the suit within a period of two months from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed. However, there is no order as to costs.

13.02.2019

Speaking Order / Non Speaking Order

Index : Yes / No

Internet : Yes

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To

The II Additional District Munsif,
Coimbatore.



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N.SATHISH KUMAR, J.,

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