

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)No.2965 of 2011
and M.P.No.1 of 2011

P.Thiagarajan

..

Petitioner

versus

1.V.P.Veerappan

2.R.Subban

..

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 25.04.2011 made in I.A.No.850 of 2010 in O.S.No.311 of 2010 on the file of the Sub Court, Namakkal.

For Petitioner : Mr.Perumal

For Respondents : No Appearance

ORDER

This Revision has been filed as against the order of the trial Court dismissing the application filed by the defendant in O.S.No.14 of 2005 to issue notice to the third party, who is claiming contribution from him in the suit claim.

2. The suit has been filed as against the defendant for the recovery of Rs.7,97,010/- on the basis of pronote. The defence of the defendant to the effect that he has signed the pronote at the instructions of one Veerappan, who was at Chennai, on whose behalf he has borrowed the money and he has also filed an application under Order 8(A) of the Code of Civil Procedure to issue notice to the said Veerappan. In the above application, the third party after receipt of the notice appeared and filed a counter. The trial Court has dismissed the application on the ground that there is absolutely no evidence whatsoever filed by the petitioner to show that the third party is liable to pay any contribution in the suit amount. Consequently, on the same day, decreed the suit in O.S.No.14 of 2005. As against the dismissal of the application filed under Order 8(A) of the Code of Civil Procedure, the present revision has been filed.

3. The learned counsel appearing for the revision petitioner would contend that the trial Court has dismissed the suit on the same day and also the application, such procedure is not correct, the third party ought to have impleaded in the suit and the suit should have been decided.

4. Heard the learned counsel appearing for the revision petitioner and there is no representation on behalf of the respondent.

5. The revision petitioner has been arrayed as defendant in the suit in O.S.No.14 of 2005, which was filed for recovery of money on the basis of pronote. In the written statement, he has taken a defence to the effect that he has signed the pronote at the instructions of the third party, namely, Veerappan and he has not received the consideration. He has also filed application to issue a notice to the said Veerappan and the third party has also appeared and filed a counter. The learned trial Judge found that there is absolutely no evidence whatsoever produced by the revision petitioner to claim any contribution from the said third party and there is no other liability established and hence, dismissed the application.

6. In Order 8, Rule A of the Code of Civil Procedure deals with the procedure of third party notice. "Where a defendant claims to be entitled to contribution from or indemnity against any person not already a party to the suit, he may, by leave of the Court, issue a notice. If the third party desires to dispute the plaintiff's claim in the suit as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the

third party may enter appearance. On such appearance, the Court if satisfied that there is a question to be tried as to the liability of the third party to make the contribution such third party should be impleaded in the suit for trial."

7. The reading of Order 8 Rule A of the Code of Civil Procedure makes it clear that mere issuance of the notice to the third party, he will not become a party defendant in the suit, to make him a party defendant in the suit the Court should satisfy itself as to the existence of any liability between such third party and the defendant. In the given case, the trial Court, in fact independently considered the rival contention and found that there is absolutely no materials whatsoever filed by the defendant to claim any contribution from the third party. When the trial Court has clearly held that no liability proved by the defendant as against the third party and thereby, dismissed the application. Such being the position, now, it cannot be contended by the revision petitioner that the third party ought to have been impleaded as party in the suit as a matter of right and hence, this Court does not find any illegality or infirmity in the order passed by the trial Court.

8. With these observations, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

21.03.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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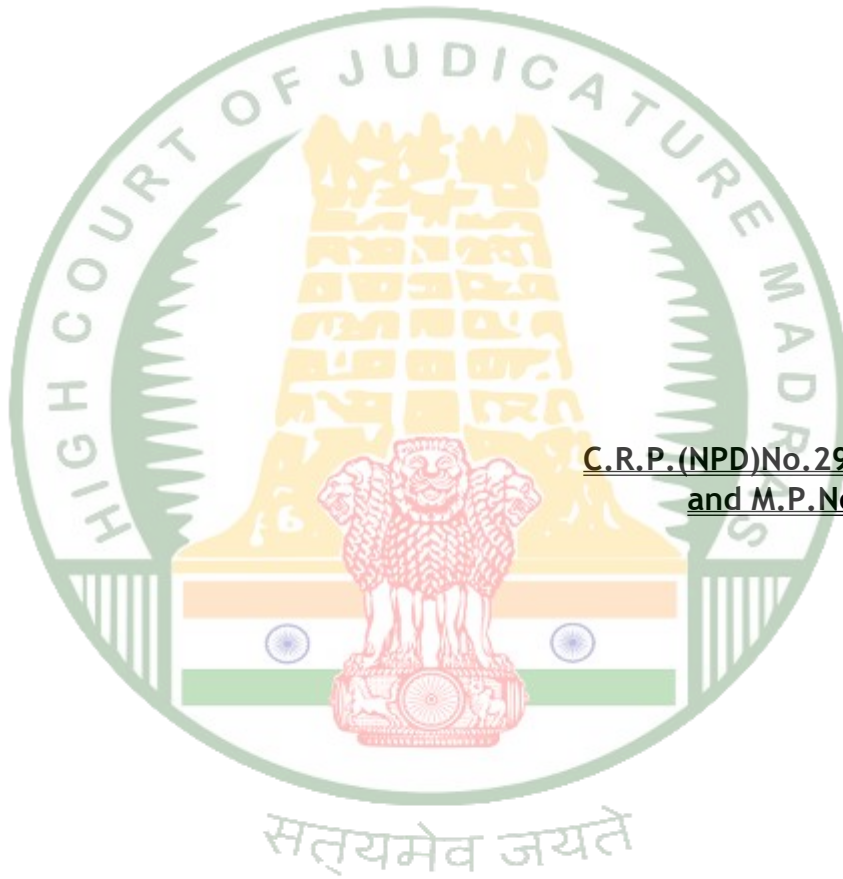
To

The Subordinate Judge,
Namakkal.



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N.SATHISH KUMAR, J.,
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