

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 28.03.2019****CORAM :****THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR****C.R.P.(PD) No.3763 of 2013****M.P.No.1 of 2013****and M.P.Nos. 4 to 6 of 2014**

Kumaraguru

.. Petitioner

Vs.

1. Angu Naicker
2. K.S.Kumaresa Mudaliar (Deceased)
3. K.S.Muthaih Mudaliar
4. Smt.Gomathi
5. Pitchumani
6. Smt.Malathi
7. Kalaiselvan

.. Respondents

All daughters and sons of
K.S.Kumaresa Mudaliar

RR4 to 7 brought on records as Lrs
of deceased 2nd respondent vide
order of court dt.07.06.2017,
by KKSJ, made in M.P.No.1/2014
in CRP (PD) 3763/2013.

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal Order dated 02.01.2013 made in I.A.No.1802 of 2012 in O.s.No.197 of 2007 on the file of the Learned District Munsif Court, Chengalpattu.

For Petitioner : Mr.K.Ramu

For Respondents : Mr.S.Ramesh
for R3 to R7

ORDER

Aggrieved over the order of the trial court dismissing the application filed by the plaintiff/proposed party to implead himself as second plaintiff in the suit, the present civil revision petition is filed.

2. The brief facts leading to file this revision petition is as follows:

(i). The original plaintiff has filed a suit for declaration, declaring the partition deed dated 29.06.2006 executed between the defendants and also for permanent injunction. It appears that he filed an Interlocutory Application for grant of interim injunction which was dismissed and he preferred CMA on 19.11.2007 reiterating that he is in possession as on 19.11.2007. The petitioner was contending that he has purchased the suit property. It is pertinent to point out that the purchase is between the dismissal of the injunction petition and filing of C.M.A.No.1 of 2008, whatever be the result of the suit, it will bind on the petitioner since he has purchased the property pending suit. Hence, the petition was dismissed and injunction was not granted.

Thereafter, it appears that the plaintiff has sold the properties to the proposed party on 28.11.2007. Now, the petitioner has filed an application before the trial court to implead him as one of the plaintiff. The trial Court has dismissed the application, against which, the present revision petition is filed.

3. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

4. The learned counsel appearing for the revision petitioners would submit that since right in the suit property is transferred to him, he is entitled to continue the suit, whereas, the learned counsel appearing for the respondent submit that he cannot continue as the plaintiff at the most, he could only be impleaded as a defendant not as plaintiff. He could not continue the suit on the basis of the original cause of action pleaded by the plaintiff.

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5. I have perused the order of the trial court. Admittedly, the revision petitioner is pendente lite purchaser. He has purchased the property in the year 2007, which is after the filing of the present suit.

The original plaintiff is still continuing the suit. Though the transfer is taken place during the pendency of the suit, such transfer is not void and is always subject to the result of the suit. Pending suit, the purchaser cannot step into the shoes of original plaintiff, as long as the original plaintiff is prosecuting the suit. Though, Order XXII Rule 10 of C.P.C enable the transferee to get the leave of the Court to continue the proceedings, such situation has not arisen in this case. The original plaintiff is still prosecuting the suit.

6. Therefore, this Court is of the view that he cannot be impleaded as a plaintiff. The right to continue the suit arises only when the original plaintiff has abandon the suit, till such time, he could not be impleaded in the place of the plaintiff to continue the suit under the original cause of action alleged by the plaintiff. Hence, this Court is of the view that at the most the proposed party can be added as one of the defendant in the suit and make out his defence.

7. In the event of original plaintiff, abandoning the suit, the proposed party can take leave of the Court, he can file the petition

before the trial Court after obtaining the leave of the trial Court.
He can be transposed as a plaintiff.

8. With the above observations, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

9. Accordingly, the proposed party is permitted to be added as one of the defendant and he is entitled to file his defence and contest the suit.

28.03.2019

msv

Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

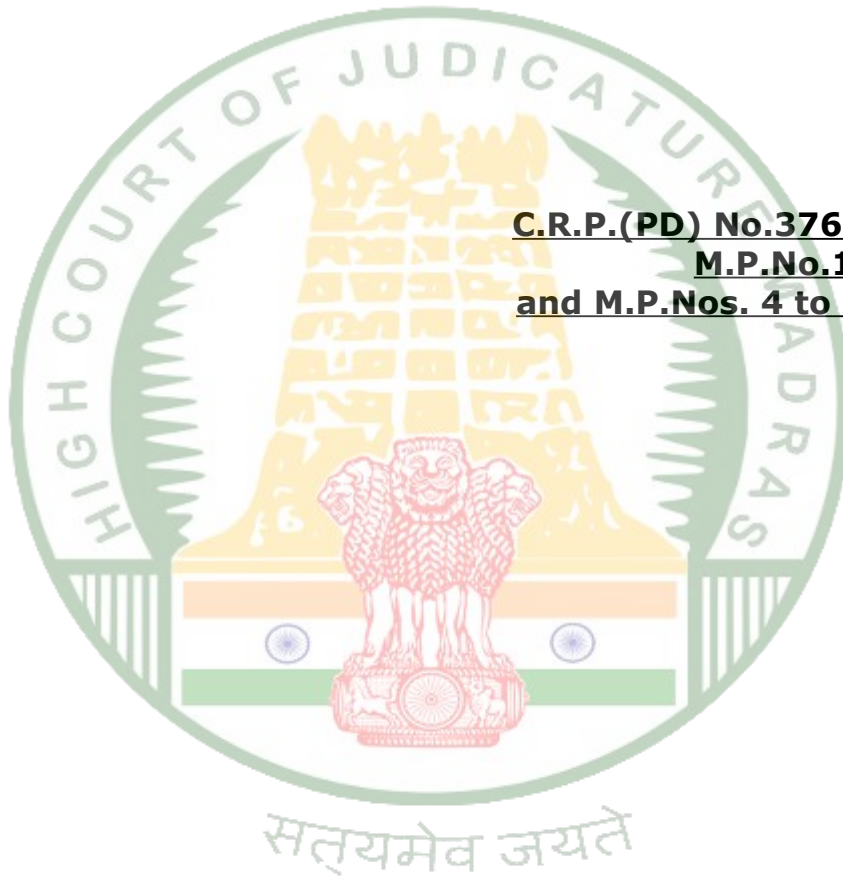
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To
The learned District Munsif Court,
Chengalpattu

N.SATHISH KUMAR, J.

msv



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and M.P.Nos. 4 to 6 of 2014

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