

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.80 of 2014

and

M.P.No.1 of 2014

C.Lickmi Chand

Petitioner

Vs

M. Kumaraswamy (Died)

1. K. Manjunathan

2. K. Prabhavathy

3. D.Govinda

4. The Commissioner
Ambur Municipality
Nethaji Road
Ambur - 635 802
Vellore District

5. Dr.Senkodi

6. M.Mumtaj Begum

7. B.Suguna

8. V.Nazeer Ahmed

9. A.V.Ahmed Basha

10.A.S.Shajidha Begum

11.K.Lakshmi

Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 01.08.2011 passed in I.A.No.588 of 1998 in O.S.No.100 of 1998 on the file of Principal District Munsif, Ambur.

For Petitioner : Mr.K.Sivasubramanian for
Mr.T.M.Hariharan

For Respondents : No appearance

ORDER

Aggrieved over the order passed in IA No.588 of 1998 in OS No.100 of 1998, the petitioner herein, who is the plaintiff in the above referred suit has filed this Civil Revision petition and prays to set aside the order.

2. Before the trial court, the petitioner/plaintiff herein has filed a Suit as against 5 defendants and seeks the relief of declaration declaring that the plaintiff is having the right to use 60' feet on northern side of the plaintiff's schedule property from 'A' to 'H' and according to the approved lay out. He further prays for the relief of injunction, restraining 1st to 3rd defendants in interfering with the plaintiff's peaceful possession and enjoyment of the Suit schedule property from 'A' to 'H'. Further more, he prayed the relief of permanent injunction as against the 4th defendant from interfering or trespassing into his peaceful and enjoyment on his rights by putting up any construction or digging, his men or agents or servants in the Suit property 'I', 60' feet road on northern side of the plaintiff's schedule of properties.

3. Before the trial Court, during the pendency of the Suit, the petitioner/plaintiff has filed an application, under Order 1 Rule 10 of Civil Procedure Code seeking the relief to implead the respondents 6 to 12 herein as parties. The learned District Munsif by an order dated 01.08.2011, had dismissed the application filed by the petitioner, on the ground that the subsequent purchasers/proposed defendants themselves stated as already the vendors are all added as parties, hence there is no need to implead them as parties to the proceedings. Feeling aggrieved over the same, the petitioner herein/plaintiff is before this Court with the present Civil Revision Petition.

4. The learned Counsel appearing for the petitioner would contend that the respondents/defendants 1 to 3 had sold out the properties in favour of the proposed defendants. Hence, the proposed defendants are necessary parties to proceed with the case. But, the learned trial Judge without considering the fact that due to the reason that the vendors loses the title in the suit property, for better adjudication, hearing the proposed defendants is necessary. Accordingly, he prayed to allow this application.

5. As far as the respondents are concerned, they are not entered in appearance, after receiving notice sent by this Court. Hence, this Court directed the Registry to print their names in the cause list. Even after printing the names of the respondents in the cause list, none of the

respondents have been appeared before this Court and not raised any objection.

6. Now, on going through the order dated 01.08.2011, passed by the learned Principal District Munsif, Ambur, only by holding that the respondent filed a counter statement, as their vendors are already on record, it is not necessary to implead them as party to the proceedings. In this regard, the learned counsel appearing for the petitioner would contend that even though the vendors of the petitioners are already on record, it is to be noted that immediately after selling their property to the proposed defendants, they lost interest in proceeding with the Suit. Only if the proposed defendants are added as parties, the case of the defendant is put forth before the Court concerned with spirit and object. In otherwise, if the order passed by the learned trial judge is restored, the learned trial Judge cannot adjudicate the real issue with proper materials.

7. The submission made by the learned counsel appearing for the petitioner is considered. Originally, the petitioner in this Civil Revision Petition presented an application before the trial Court under Order 1 Rule 10 of Civil Procedure Code. In the said rule, a person may be added as a party to the Suit, in the situation, if the Court feels that, without his presence, the question in the Suit cannot be completely decided. It cannot be said that the main object of the rule is to prevent multiplicity of

actions, though it may have incidentally have that effect. Of course, a person, who is neither necessary nor a proper party cannot be allowed to be a party in the Suit. So, it is necessary to find out whether the proposed defendants are necessary parties or they are proper parties.

8. It is settled law that, it is open to the Court, to add any such person as necessary party in the Suit. In the said circumstances, it is also necessary to decide the issue raised in this Civil Revision Petition logically also. It is true, if the property having by the existing parties have been sold out, definitely they have lost the interest in proceed with the Suit. Since, the suit is filed for the relief of declaration, the plaintiff has to prove his title. Further, it is to be noted that Suit is related to the property purchased by the proposed defendants, hence the presence of the proposed defendants is necessary for better adjudication. The learned trial judge without appreciating those aspects had dismissed the application filed by the petitioner.

9. In view of the above discussions, the impugned order passed in I.A.No.588 of 1998 in OS No.100 of 1998 on the file of Principal District Munsif, Ambur is set aside. The learned Principal District Munsif, is directed to give opportunity to the petitioner/plaintiff to implead the proposed defendants as parties to the proceedings. The learned Judge is further directed to give opportunity, particularly send the notice to the proposed defendants and proceed with the case, after receiving written

statement, if any, filed by the proposed defendants. Further, it seems that the Suit is of the year 1998 and hence, the learned Principal District Munsif, Ambur is directed to dispose of the suit within a period of three months preferably on or before 29.12.2019, in accordance with law.

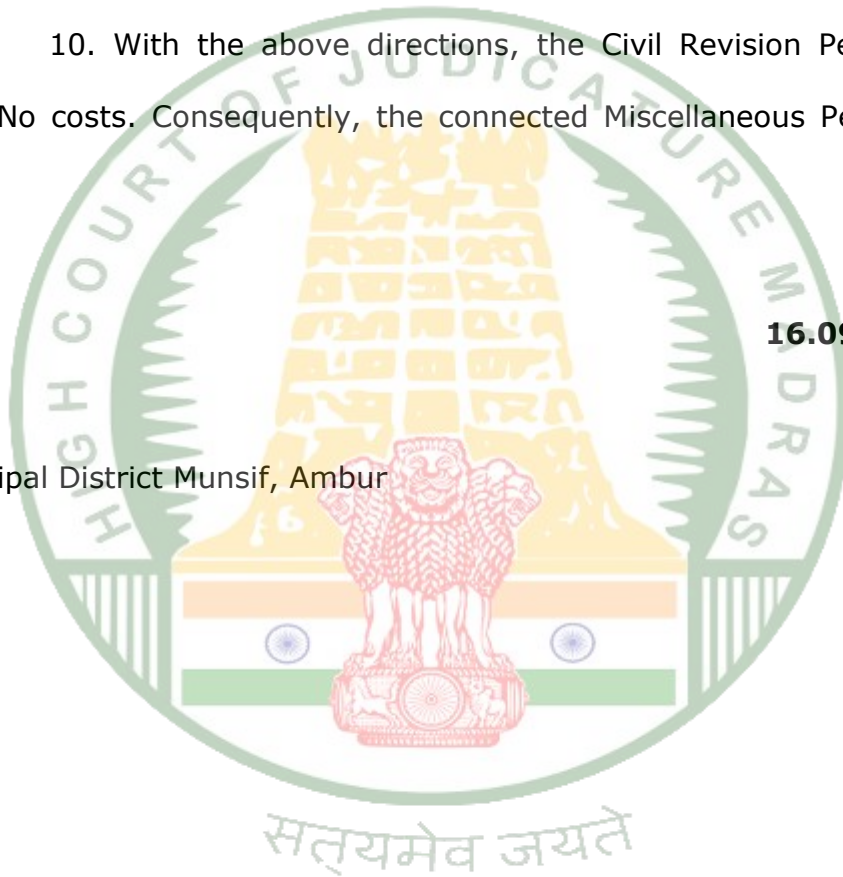
10. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

vrn

16.09.2019

To

The Principal District Munsif, Ambur



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R.PONGIAPPAN, J.,

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