

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.3796 of 2019
and CMP No.24867 of 2019

Ms.K.P.Kalpagam

.. Petitioner

Vs

1. Mrs.Janani
2. Ms.R.Roshni
3. Ms.Randhini
4. K.P.Sivaramakrishnan
K.P.Neelakandan [Deceased]
5. K.P.Krsihnan
6. K.P.Chandrasekaran
7. K.P.Shankar
8. A.Malathy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.14446 of 2016 in O.S.No.2361 of 2016 dated 13.08.2019, on the file of the II Additional City Civil Court, Chennai.

For Petitioner : Mr.R.Natarajan

ORDER

The 1st defendant in OS No.2631 of 2016, on the file of II Additional City Civil Court, Chennai, is the petitioner herein.

2. Before the II Additional City Civil Court, Chennai, the respondents 1 to 3 herein filed the above referred suit, as against the revision petitioner and other respondents 4 to 9, seeking the relief to pass a Preliminary Decree for partition to determine the shares of the plaintiffs in respect of the Suit Schedule property by defining the division of property into 7 shares and thereon allot 1/7 share to the plaintiffs jointly.

3. During the course of trial proceedings, the revision petitioner herein filed an application under Order I Rule 13 read with Section 155 of Code of Civil Procedure, in IA No.14446 of 2016, praying to dismiss the plaint on the ground of non joinder of necessary party.

4. The II Additional Judge, City Civil Court, Chennai, after affording and opportunity to the respondents herein by order dated 13.08.2019 dismissed the application filed by the revision petitioner. In the impugned order, the learned trial Judge has held, that the plea raised by the revision petitioner in respect of the non joinder of necessary party will be decided only after framing a specific issue, during the time of trial.

5. Aggrieved over the said order, the petitioner is before this Court with the present Civil Revision Petition.

6. Today, when the Civil Revision Petition, came up for admission, the learned counsel appearing for the revision petitioner was present and made submission that the suit scheduled property, is the absolute property of the revision petitioner. In fact the said property has been purchased by the revision petitioner on 02.08.2010, from the Tamil Nadu Housing Board, a statutory body constituted by the Tamil Nadu Housing Board Act, 1961 (Tamil Nadu Act 17 of 1961). In the said circumstances, to prove the title of the suit scheduled property, the vendor of the revision petitioner i.e. Tamil Nadu Housing Board, is a necessary party. But, the respondents 1 to 3 herein without impleading the Tamil Nadu Housing Board, as a party to the proceedings, have filed a suit, due to which the plaint filed by the respondents 1 to 3, deserves to be dismissed.

7. Heard the learned counsel appearing for the revision petitioner on the merits of the case and perused the materials available on record. As no adverse order is passed against the respondents, notice to them, is dispensed with.

8. Upon considering the arguments advanced by the learned counsel appearing for the revision petitioner, the ground of non joinder of necessary party, may be the reason for dismissing the suit and not for rejecting the suit. Without understanding the difference between the rejection order and the judgment, the petitioner herein has filed an application before the trial Court, for rejecting the plaint for the sole ground that the suit is hit by non joinder of necessary parties.

9. On going through the averments set out by the revision petitioner in the affidavit filed in support of the Interlocutory Application filed for rejecting the plaint, she has categorically mentioned that the suit property was independently purchased by her, from the Tamil Nadu Housing Board. So, if she feels that Tamil Nadu Housing Board, is a necessary party to decide the suit, she is having the opportunity to file an application under Order 1 Rule 10 to implead the Tamil Nadu Housing Board as a party in the suit.

10. Instead of filing an application to implead the Tamil Nadu Housing Board, as a party to proceedings, revision petitioner has filed an

application to reject the plaint on the sole ground that the suit is barred by non joinder of necessary party, which is not a ground for rejecting the suit.

11. Further, on going through the Order 7 Rule 11 CPC, the grounds for rejecting the plaint does not include the ground of non joinder of necessary party. Said provision is extracted hereunder:

“11. Rejection of Plaint-- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for

reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from the correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

12. In general, if a party who has not been joined in a suit is merely a proper party as distinguished from a necessary party, it would be futile to raise any objection of the nature contemplated by Order 1 Rule 13 of Code of Civil Procedure. Such an objection would never be raised because in view of the provisions of Order I Rule 9, it would not be fatal and the Court could always proceed with the suit in regard to the rights and interests of the parties actually before this Court. In otherwise, the suit cannot be rejected on the ground of non joinder of necessary party raised for the first time.

13. Though the plea of non joinder of necessary party has to be raised at the first instance, after raising such plea, it is for the plaintiff to implead the party indicated by the defendant as a party to the proceedings, before the Court below. Without giving any opportunity to the plaintiff to implead the Tamil Nadu Housing Board, as a party to the proceedings, the

1st defendant/revision petitioner has straightaway filed an application to reject the plaint, on the ground of non-joinder of necessary party, which cannot be entertained.

14. Therefore, in the light of the above observation, the Civil Revision Petition, deserves to be dismissed and accordingly, the same is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.11.2019

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes
ars

To

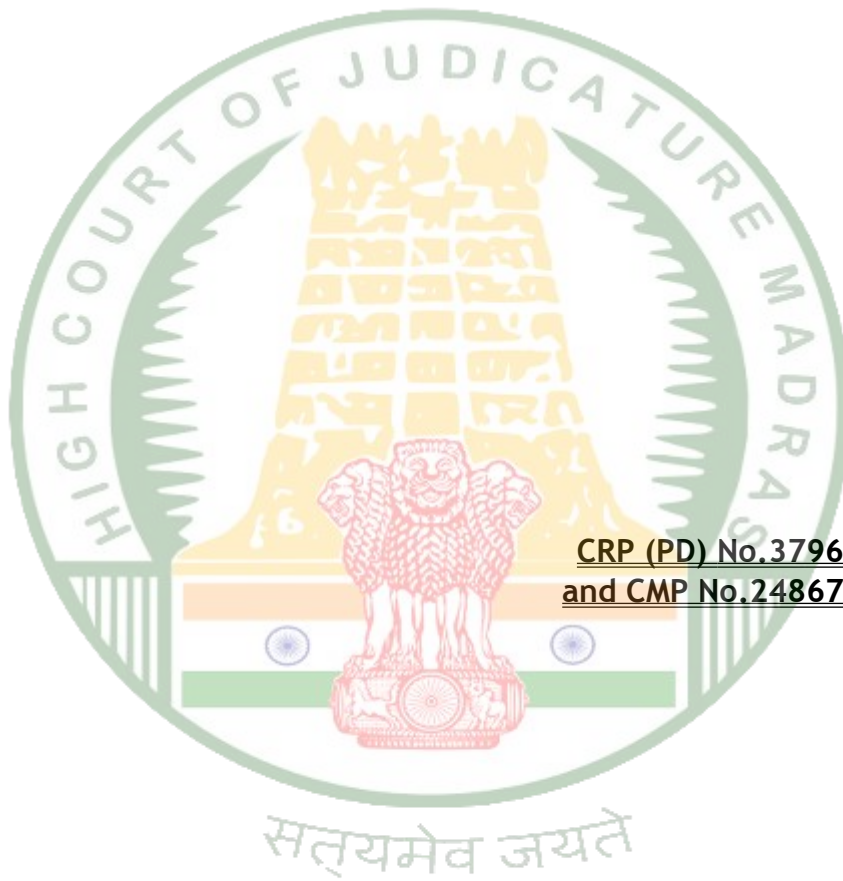
The II Additional Judge, City Civil Court, Chennai.

सत्यमेव जयते

WEB COPY

R.PONGIAPPAN, J.,

ars



CRP (PD) No.3796 of 2019
and CMP No.24867 of 2019

WEB COPY

22.11.2019