

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.(PD) No.3665 of 2019
and C.M.P.No.24051 of 2019

N.R.Dilli Babu (died)

1.Tmt.D.Saraswathy

2.D.Giri Raj

3.D.Leela Bai

4.D.Gajendra Babu

5.D.Anu Radha

6.D.Mohan Babu

... Petitioners

-Vs-

1.Ramakodi

2.Uma Sankari

3.Ashokan

4.Deenadhayalan

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the judgment and decree dated 27.09.2019 passed in I.A.No.3 of 2019 in O.S.No.5067 of 2012 on the file of the VIII Assistant City Civil Court, Chennai.

For Petitioners

: Mr.A.R.Nixon

ORDER

This revision petition has been filed against the judgment and decree dated 27.09.2019 passed in I.A.No.3 of 2019 in O.S.No.5067 of 2012 on the file of the VIII Assistant City Civil Court, Chennai.

2. Before the trial Court, the revision petitioners filed the suit for a bare injunction against the defendants, in respect of the suit property. In the said suit, the present application was filed by respondents 1 and 2, who are the third parties, to implead themselves as party defendants in the suit. Since the said application was allowed by the Court below through the impugned order, aggrieved over the same, the revision petitioners have filed the present revision.

3. I have heard Mr.A.R.Nixon, learned counsel appearing for the revision petitioners / plaintiffs, who would submit that already a suit in O.S.No.281 of 1991 was filed by the third parties against the plaintiffs / revision petitioners and in the said suit, decree was made in their favour, against which the revision petitioners / plaintiffs unsuccessfully filed A.S.No.3 of 1998, as against which a further appeal ie., S.A.No.263 of 2000 was filed by these revision petitioners / plaintiffs before this Court and in the said S.A.No.263 of 2000, this Court by judgment dated 01.02.2013, set aside the decree of both the trial Court as well as first appellate Court and remitted the matter back to the trial Court to re-hear the matter and decide the issue.

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4. In the meanwhile, since the revision petitioners / plaintiffs are in possession of the suit property, where the present defendants in the suit had put up some illegal construction. In order to remove such illegal construction, seeking for mandatory injunction, the present suit has been laid by the revision petitioners /

plaintiffs. Therefore, it is the issue between the revision petitioners / plaintiffs and the defendants, who are the neighbours of the revision petitioners / plaintiffs and therefore, to resolve the said issue in the said suit, the third parties need not be impleaded and hence, the impugned order allowing the third parties to be impleaded as party defendants of the suit is unjustifiable and erroneous and therefore, the same is assailed herein.

5. I have considered the said submissions made by the learned counsel for the revision petitioners / plaintiffs and have perused the materials placed on record.

6. As has been stated by the learned counsel for the revision petitioners / plaintiffs, the respondents / third parties viz., one Kuppusamy filed the suit in O.S.No.281 of 1991 in respect of the same property, as against the revision petitioners / plaintiffs, who are the defendants in the said suit and the suit was decreed in favour of the plaintiff therein, as against which the revision petitioners / plaintiffs unsuccessfully filed A.S.No.3 of 1998. Thereafter, it seems that Second Appeal in S.A.No.263 of 2000, was filed before this Court by the revision petitioners / plaintiffs, who were the defendants in the said suit filed by Kuppusamy and during the pendency of the said second appeal, the said Kuppusamy died and the present respondents Ramakodi and Umasankari, being the legal heirs of the said Kuppusamy got impleaded as party respondents in the said S.A.No.263 of 2000.

7. The said S.A.No.263 of 2000 was allowed by the judgment of this Court dated 01.02.2013, where the learned Judge has held as follows:-

"21. In the result, this Second Appeal is allowed. The judgment and decree in A.S.No.3 of 1998 on the file of the V Additional City Civil Court, Chennai dated 08.10.1998 confirming the judgment and decree in O.S.No.281 of 1991 on the file of the VII Assistant City Civil Court, Chennai dated 21.12.1996, is hereby set aside. The suit is remitted back to the trial Court for the purpose indicated in the judgment. The trial Court shall endeavour to dispose of the suit preferably within a period of six months from the date of receipt of a copy of this order. CMP No.1220 of 2001 is allowed. No costs."

8. As per the said remand order, the suit in O.S.No.281 of 1991 has to be re-heard. However, as per the information available, the said suit is yet to be taken up for re-hearing. In the meanwhile, the present suit ie., O.S.No.5067 of 2012 has been filed by the revision petitioners / plaintiffs against the defendants for mandatory injunction to remove the defendants' construction allegedly made by way of illegal construction in the suit property. It is not in dispute that the suit property in the earlier suit in O.S.No.281 of 1991 and the suit property in the present suit in O.S.No.5067 of 2012 is one and the same.

9. Now, the issue is whether these third parties Ramakodi and Umasankari are necessary parties in the present suit to be heard. With that question in mind, the learned Judge of the trial Court has approached the issue and decided the I.A.No.3 of 2019 in favour of the third parties.

10. The third parties may be third parties in the present suit as the present revision petitioners / plaintiffs in the suit have not impleaded the said two persons as party defendants in the suit. However, the fact remains that the said third parties have already filed a suit in O.S.No.281 of 1991, and though it was originally decreed and the decree was confirmed in the first appeal, subsequently in Second Appeal, both the decrees were set aside and the matter has been remitted back to the trial Court for re-hearing. When that being the position, O.S.No.281 of 1991 filed by the third parties pending before the concerned Court has to be tried, where these revision petitioners / plaintiffs are party defendants. Therefore, that is the main suit between the third parties and the present plaintiffs on the issue of ownership or title over the suit property.

11. When that being the position, if the present suit as laid by the revision petitioners / plaintiffs against the defendants with a prayer for mandatory injunction is tried and decided either way, without having the impleadment or participation of the present third parties, certainly that will have a bearing on the issues raised in the original suit in O.S.No.281 of 1991, as that is the comprehensive suit for

declaration of title between the third parties and the revision petitioners / plaintiffs. Therefore, only in that circumstances, the learned Judge has allowed these third parties to be impleaded as party defendants.

12. Even this Court feels that, at this juncture, the present suit ie., O.S.No.5067 of 2012 and O.S.No.281 of 1991 shall be heard jointly, and then only the issue between the parties can be discussed comprehensively and decided. Otherwise, there will be dichotomy of the decision in both sides.

13. In that view of the matter, there is absolutely no infirmity or illegality or perversity attached to the impugned order, where the learned Judge has rightly allowed the said I.A., filed by the third parties for impleading themselves as defendants in the suit. Since these third parties are the plaintiffs in the other suit, which is the earlier one ie., in the year 1991 and much water had flown pursuant to the said suit, as the suit was decreed, which was confirmed in A.S.No.3 of 1998 and subsequently both the decrees in O.S.No.281 of 1991 and A.S.No.3 of 1998 was set aside by a judgment of this Court in S.A.No.263 of 2000 and the matter was remanded back to the trial Court with a direction to re-hear the suit.

14. The said suit in O.S.No.281 of 1991 is yet to be taken up for hearing. These factors have been clearly set out in the present application in I.A.No.3 of 2019 by the third parties and only on consideration of the same, the learned Judge

has allowed the present application, of course, rightly. Therefore, there can be no successful challenge, to be put against the present impugned order by the revision petitioners / plaintiffs. In that view of the matter, this Court feels that the revision petitioners / plaintiffs have not made out a case to assail the impugned order. Accordingly, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Index : Yes
Internet : Yes
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To

The VIII Assistant Judge, City Civil Court, Chennai.

13-11-2019



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C.R.P.(PD) No.3665 of 2019

R. SURESH KUMAR, J.

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