



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
C.R.P.(PD) (MD) No.2139 of 2012
and M.P.No.1 of 2012

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Ellappa Naicker
Through its power of attorney
P.Balasubramanian ... Petitioner/Plaintiff

-vs-

1.R.Vellaichamy ... Respondent/proposed
2nd defendant

2.S.Ramasamy ... Respondent
/1st Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 31.07.2012 passed in I.A.No.53/2012 in O.S.No.227/2010 on the file of the District Munsif Court, Kovilpatti.

For Petitioner :Mr.S.J.Chakravarthy
for M/s.Eddy and Emboss

For Respondent : Mr.B.Rajesh Saravanan for R1
No appearance for R2

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below allowing the application filed under Order I Rule 10 of the Civil Procedure Code to implead the first respondent herein, as the proposed second defendant in the suit.

2. The petitioner is the plaintiff and he has filed a suit against the second respondent herein seeking for the relief of declaration and permanent injunction. The second respondent/defendant has also filed a written statement by taking a stand that he has acquired title by adverse possession. The first respondent herein has filed an application before the Court below to implead himself as a party to the proceedings on the ground that he has entered into an agreement of sale on 11.09.2009 with regard to



the same property with the second respondent herein and he has filed a suit in O.S.No.72/2011 before the Sub Court, Kovilpatti claiming for the relief of specific performance and the same is pending. Therefore, the first respondent herein wanted to implead himself as the party to the proceedings.

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3. The Court below has allowed the application mainly on the ground that there will be multiplicity of proceedings, if the first respondent is not made as a defendant in the suit and that the first respondent herein is a necessary party to the proceedings.

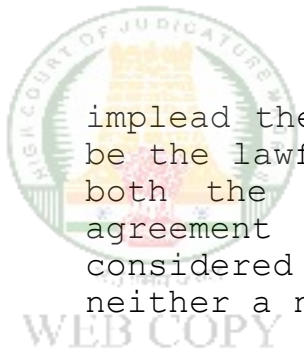
4. The learned counsel appearing on behalf of the petitioner submitted that admittedly, the first respondent is not claiming any title to the property. The first respondent is claiming to be an agreement holder with the second respondent and there is an independent suit pending in that regard. Even as per the case of the second respondent, he is recognizing the petitioner/plaintiff as the owner of the property, but, however, he is claiming title by adverse possession. The learned counsel, therefore, submitted that the first respondent herein is neither a necessary nor a proper party to the proceedings.

5. Per contra, the learned counsel for the first respondent submitted that the first respondent is a necessary party to the proceedings. The learned counsel further submitted that if the first respondent is not made as a party in the suit, even if he gets a decree in the suit filed by him against the second respondent herein, he cannot work out his remedy and the same will unnecessarily lead to multiplicity of proceedings. The learned counsel, therefore, concluded his arguments by submitting that the order of the Court below requires no interference.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The main issue that is involved in the suit is as to whether the petitioner has title over the property or he has lost his title to the second respondent, in view of the fact that the second respondent has acquired title through adverse possession. Even as per the case of the second respondent herein, he recognized the petitioner as the owner of the property. However, he claims title through adverse possession. For deciding this issue, the first respondent is neither a necessary nor a proper party to the proceedings. The petitioner is the *dominus litus* and he cannot be forced to add anyone as a party to the suit unless the party is a necessary or a proper party.

8. Admittedly, the first respondent herein has filed a suit in O.S.No.72/2011 before the sub Court, Kovilpatti against the second respondent herein seeking for the relief of specific performance. In the said suit, he can always file a petition to



implead the petitioner, since the petitioner is claiming himself to be the lawful owner of the property. Steps can also be taken to try both the suits before the same Court. This Court is not in agreement with the finding given by the Court below and in the considered view of this Court, the first respondent herein is neither a necessary nor a proper party to the proceedings.

9. In the result, the fair and final order passed by the Court below in I.A.No.53/2012 passed by the Court below is hereby set aside and the civil revision petition is allowed. The Court below is directed to complete the proceedings in O.S.No.227/2010 within a period of three months from the date of receipt of copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

RR

To
The District Munsif Court, Kovilpatti.

+1 CC to M/s.B. RAJESH SARAVANAN, Advocate (SR-100043[F] dated 21/11/2019)

+1 CC to M/s.S.J.CHAKKKARAVARTHY, Advocate (SR-100286[F] dated 21/11/2019)

C.R.P. (PD) (MD) No.2139 of 2012
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