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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD)No.248 of 2012

and

MP(MD)No.1 of 2012

P.Chellamuthu

... 1st Respondent/Plaintiff/Petitioner

Vs.

1.V.Sadhasivam

2.V.M.Palaniappan

... Petitioners/Impleaded parties
Defendants 2 & 3/Respondents

3.Maheswaran

... 2nd Respondent/Defendant/Respondent

PRAYER: Civil Revision Petition is filed under Section 227 of Constitution of India, to set aside the order dated 29.06.2011 in I.A.No.441 of 2011 in O.S.No.116 of 2011, on the file of Additional District Munsif Court, Karur.

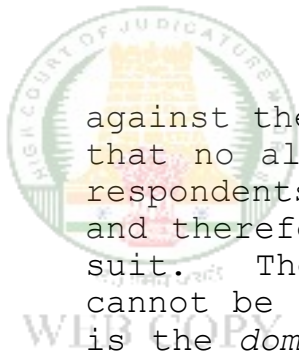
For Petitioner	: Mr.K.Govindarajan
For R1	: Mr.V.Balaji
For R2	: died
For R3	: given up

O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below, allowing an application filed by the respondents 1 & 2 under order 1 Rule 10 (2) CPC, to implead them as defendants 2 & 3.

2. The petitioner is the plaintiff in the suit. The petitioner has filed a suit against the third respondent herein showing him as the sole defendant, claiming for the relief of permanent injunction. The third respondent did not contest the suit. When the suit was at the stage of trial, the respondents 1 & 2 herein filed an application before the Court below under Order 1 Rule 10 (2) CPC to implead themselves as defendants on the ground that they are necessary and proper parties in the proceedings. The Court below, after considering the fact and circumstances of the case, allowed the application by fair and final order dated 29.06.2011.

3. The learned counsel for the petitioner submitted that in the entire plaint, the petitioner has made allegations only as against the third respondent herein and the relief has been sought for only

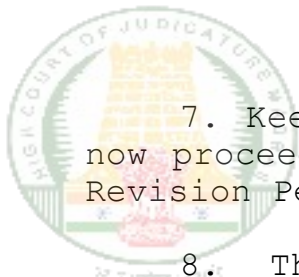


against the third respondent. The learned counsel further submitted that no allegations have been made as against the first and second respondents herein and no relief has been sought for against them and therefore, they are neither necessary nor proper parties in the suit. The learned counsel further submitted that the plaintiff cannot be forced to add any one as a defendant in the suit since he is the *dominus litis* and it is for the plaintiff to choose whom he wants to add as a defendant. The learned counsel concluded his arguments by submitting that even if an *ex parte* decree is passed in the suit, it will only bind the third respondent herein and it will not in anyway affect the right of the first and second respondents. The learned counsel submitted that the order passed by the Court below suffers from illegality and the same is liable to be interfered by this Court.

4. The learned counsel appearing on behalf of the first and second respondents submitted that the first and second respondents have made sufficient averments in the application and have also submitted the materials to substantiate the fact that they are necessary and proper parties in the suit. The learned counsel further submitted that the original defendant viz., third respondent herein has chosen not to contest the suit and the suit is going to be decreed *ex parte*. Therefore, by virtue of the *ex parte* decree, there are chances that the petitioner will interfere with the enjoyment of the property of the respondents 1 & 2 and these respondents will be put to irreparable loss and hardship. Therefore, the first and second respondents should be permitted to implead themselves as defendants in the suit and contest the suit on merits.

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

6. The basic principle of civil law viz., that it is for the plaintiff to choose the parties to be added as a defendant and no one can force the plaintiff to add any one as a defendant, is a settled position of law which does not require elaboration. The plaintiff is the *dominus litis* and he has to decide the person whom he will add as a defendant in the suit. The only exception that has been created for this first principle is where a proper or a necessary party wants to implead himself in the suit on the ground that the decree passed in the suit will have an impact on his right, title and / or interest. Therefore, when the Civil Court considers an application under Order 1 Rule 10 (2) CPC, it has to be borne in mind that it is only the proper/necessary party, who can be made as a defendant in the suit. Necessary party is one without whom no effective order can be made. Proper party is one, whose presence is necessary for a complete and final decision. Enquiry in such an application would be whether enforceable legal right of such suit.



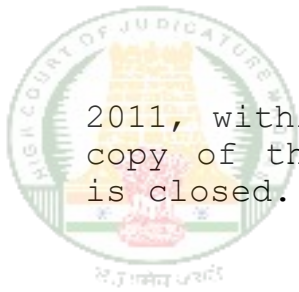
7. Keeping this fundamental principle in mind, this Court will now proceed to decide the issue that has been raised in this Civil Revision Petition.

8. The first and second respondents wanted to implead themselves as defendants in the suit on the ground that by virtue of the partition deed, dated 15.07.1976, entered into between the second respondent herein, one R.Pitchai Muthu and the father of the first respondent shares were allotted in various properties which also includes S.No.167 (suit property). In the said survey number, 0.30 acres was allotted to the second respondent herein and 0.48 acres was allowed to the father of the first respondent herein. After his demise, the first respondent claims right over the extent of 0.48 acres. Therefore the first and second respondents herein wanted to be impleaded in the suit. According to the first and second respondents, the petitioner is aware about the said facts and in spite of the same, he has not impleading them as parties in the suit and his only aim is to cause disturbance to their enjoyment of the property by getting a decree behind their back. Therefore, the first and second respondents wanted to implead themselves as defendants and to contest the suit.

9. The Court below while considering the application filed by the first and second respondents, took into consideration the said partition deed and also the description of the property in the plaint. Thereafter, it came to a conclusion that the first and second respondents are necessary and proper parties in the suit. The Court below also took into consideration the fact that the original defendant was not contesting the suit. Therefore, the Court below has given a finding that the presence of the respondents 1 & 2 are required for a complete and effectual adjudication of the dispute involved in the suit.

10. This Court does not find any illegality or infirmity in the order passed by the Court below and the Court below has given cogent reasons while allowing the application filed by the respondents 1 & 2. This Court, under Article 227 of the Constitution of India, has a very limited power to interfere with the order passed by the Court below and this Court does not find any perversity in the findings given by the Court below while allowing the application.

11. In the result, this Court does not find any merits in this Civil Revision Petition and the order passed by the Court below is hereby confirmed and the Civil Revision Petition is dismissed. The Court below is directed to complete the proceedings in O.S.No.116 of



2011, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar(CS)

To

1. The Additional District Munsif Court,
Karur.
2. The Record Keeper,
V.R.Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.BALAJI, Advocate (SR-85963[F] dated 09/09/2019)
+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-85965[F] dated
09/09/2019)

C.R.P. (PD) (MD) No.248 of 2012
and
MP (MD) No.1 of 2012
06.09.2019

dss

MK (25.09.2019) 4P 6C