

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2020

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.R.P.(PD) No.1085 of 2010

Kaliyaperumal

... Petitioner

VS.

1. Selvaraj
2. Balasubramanian
3. Elangovan
4. Santhamani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decretal order dated 29.01.2010 in I.A.No.433 of 2005 in O.S.No.206 of 1989 on the file of the I Additional Sub Court, Cuddalore.

For Petitioner : Mr.T.Sezhian

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order dated 29.01.2010 made in I.A.No.433 of 2005 in O.S.No.206 of 1989 on the file of the I Additional Sub Court, Cuddalore.

2. Learned counsel for the Petitioner contended that, the 1st Respondent herein, who is the Petitioner in the Application cannot be impleaded as a party to the Suit.

3. The case of the Petitioner in the Application is that, he is in possession and enjoyment of the property in question, to an extent of 4.65 acres and that, the Respondents therein have no title to the same. Hence, according to him, he is a necessary party as per the provisions under Order I Rule 10(2) C.P.C. and that, the Court has got powers to add or strike out any party at any stage of the proceedings, either by way of an Application or without an Application being filed.

4. The Suit has been filed for specific performance. The Application in I.A.No.433 of 2005 in O.S.No.206 of 1989, seeking to implead the Petitioner therein as 4th Defendant in the Suit, was allowed on the ground that, the Petitioner therein has nexus to the Suit. The Trial Court has also held that, no prejudice is going to be caused, if the Petitioner therein is heard. In any case, the impleaded party has to produce necessary documents to substantiate his case, to enable the Court to come to a conclusion.

5. Whether the property in question belongs to the Petitioner or the Respondents, nothing prevents the 1st Respondent herein to be heard by the Court, and the Trial Court has rightly held that, opportunity has to be provided to both parties, to put forth their contentions in the Suit.

6. In support of his contention, learned counsel for the Petitioner drew the attention of this Court to a decision rendered by this Court in the case of **Krishnan vs. P.Palanisamy, 2010 (3) L.W. 67 (C.R.P.(PD) No.175 of 2009, (decided on 22.04.2010)**, wherein, it is held as under:

“11. For the impleadment of a third party, in a suit for specific performance, there must be a right to some relief against the party seeking impleadment, in respect of the controversies involved in the proceedings.

...

Impleadment of a third party cannot be allowed to change the character or the nature of the suit filed for specific performance of an agreement for sale. When the plaintiff in the suit for specific performance of the agreement for sale is the 'dominus litus' he cannot be forced to add parties, against whom he does not seek any relief, unless it is a compulsion of the rule of law.”

7. In the case on hand, the 1st Respondent herein, who is the Petitioner in the Application, has claimed title to the property in question. The contention of the Petitioner herein that, the 1st Respondent herein will have to file a Petition for declaration of title, may appear to be logical, but, it is deceptive, as the specific stand of the 1st Respondent herein is that, the property in question belongs to his father.

8. In view of the foregoing, this Court opines that, the decision cited supra, is not applicable to the facts of this case, and holds that, there is no necessity to interfere with the order of the Trial Court.

9. Since the Suit is of the year 1989, the Trial Court is directed to proceed with the hearing of the Suit in **O.S.No.206 of 1989** on a day-to-day basis, without adjourning the same beyond **five working days** at any point of time and arrive at a conclusion on merits, within a period of **nine months from the date of receipt of a copy of this order.**

The Civil Revision Petition stands dismissed with the above direction.

No costs. Consequently, connected M.P.No.1 of 2010 is closed.

06.03.2020

Index : Yes/No
Speaking Order : Yes/No

(aeb)

To:
The I Additional Sub Court, Cuddalore.

C.R.P.(PD) No.1085 of 2010

S.VAIDYANATHAN,J.

(aeb)



Order in
C.R.P.(PD) No.1085 of 2010

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