

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).1594 of 2015

and

MP.No. 1 of 2015

Kathiriappan

... Petitioner

Vs.

1.Govindammal
S/o.Raji

2.Nagavalli
W/o.Govindaraj

3.Ashokan
S/o.Ponnusamy

4.Thamaraiselvi
W/o.Asokan

5.Duraisamy

6.Sakthivel

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition and to set aside the Fair and Decretal orders dated 11.03.2015 made in I.A.No.96 of

2012 in O.S.No.5 of 2012 on the file of the Court of the Additional District Judge, Dharmapuri.

For Petitioner : Mr.M.V.Krishnan

For Respondents : Mr.Mohanasundararajan
for R3 and R4

: No appearance for R1, R2, R5 and R6

ORDER

This Civil Revision Petition has been filed by the petitioner/first defendant against the dismissal of the application in I.A.No.96 of 2012 in O.S.No.5 of 2012 on the file of the Court of the Additional District Judge, Dharmapuri dated 11.03.2015.

2.The Petitioner herein, who is being the first defendant, filed an application under Order I Rule 10(2) of CPC (I.A.No.96 of 2012) to implead the respondents 3-6 herein as defendants 6 to 9 in the suit. The learned Trial Court Judge by the order dated 11.03.2015 had dismissed the said application. Feeling aggrieved, the petitioner/first defendant has filed the present Civil Revision Petition.

3.Even though, notice was served on the respondents 1, 2, 5 and 6/plaintiffs and their names also printed in the cause list, they have not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and the learned counsel for the respondents 3 and 4, order is being passed in this petition.

4.Heard, Mr.M.V.Krishnan, learned counsel for the petitioner and Mr.Mohana Kirshnan, learned counsel for the respondents 3 and 4.

5.The learned counsel for the petitioner has submitted that the respondents 1 and 2 herein had filed a suit in O.S.No.5 of 2012 on the file of the Court of the Additional District Judge, Dharmapuri, for the relief of partition and separate possession of the suit properties. He further submitted that during the pendency of the said suit, the petitioner herein and the defendants 3 to 5 had sold the suit property to the respondents 3 to 6 herein under a registered sale deed dated 01.08.2012 and hence they are the necessary parties to the said suit and therefore the petitioner herein/first defendant had filed an application under Order I Rule 10(2) of CPC to implead the respondents 3 to 6 herein as

defendants 6 to 9 in this suit, but the learned Trial Court, without considering the afore said sale deed, had erroneously dismissed the said application and therefore, he prayed to set aside the order passed in I.A.No.96 of 2012 in O.S.No.5 of 2012 and allow the said application.

6.The learned counsel for the petitioner, in support of his contentions, has relied upon the decision in *Thomson Press(India) Ltd. Vs.Nanak Builders and Investors P.Ltd. and Ors.in AIR 2013 SC 2389*".

7. Per contra, the learned counsel for the respondents 3 and 4 herein had submitted that since the petitioner herein is a defendant, he cannot file a petition under Order I Rule 10 (2) of CPC to implead the third parties as defendants and taking into consideration the said fact the trial Court had rightly dismissed the said application and in the said order, this Court need not interfere and therefore, he prays to dismiss the Civil Revision Petition.

8. A perusal of the typed set of papers filed by the petitioner shows that the respondents 1 and 2 herein had filed a suit in O.S.No. 5 of 2012

on the file of the Court of the Additional District Judge, Dharmapuri for the relief of partition and separate possession of the suit properties. The petitioner herein, who is first defendant in the said suit, after receipt of the summons in the suit, had filed an application under Order I Rule 10 (2) of CPC stating that during pendency of the said suit, he along with the defendants 3 to 5 had sold the suit properties to the respondents 3 to 6 herein under a registered sale deed dated 01.08.2012 and hence they should be impleaded as defendants 6 to 9 in the said suit. To substantiate the allegation that they had sold the properties to the respondents 3 to 6 herein, it appears that the petitioner herein has not filed any proof before the Trial Court. Even according to the petitioner he has already sold the properties to the respondents 3 to 6 herein. Under the said circumstances, he cannot compel the plaintiff to seek relief against the persons who are not before the Court. The plaintiff being the dominus litis, it is for him to decide against whom he wants relief. If the petitioner feels that the proposed parties are necessary parties, at the most, he can say the said fact in his written statement and the trial Court can frame an issue on that line and decide the said issue whether the suit is bad for non-joinder of necessary parties and instead of that the

petitioner being a defendant, he cannot file a petition to implead the third parties as defendants in the suit.

9. *Thomson Press(India) Ltd. Vs.Nanak Builders and Investors P.Ltd. and Ors(cited supra)*, the appellant therein had filed an application to implead them as defendants and the said application was dismissed by the Delhi High Court against which an Appeal was filed before the Honourable Supreme Court. In the said appeal, the Honourable Supreme Court held that since the said appellant had purchased the properties during pendency of the suit, they are entitled to participate in the proceedings by stepping into shoes of the original defendants. In this case, the purchasers have not filed any petition to implead themselves as respondents. Hence the aforesaid decision will not apply to the facts of this case.

10. For the aforesaid reasons, this Court does not want to interfere in the order passed in I.A.No.96 of 2012 in O.S.No.5 of 2012 on the file of the Court of the Additional District Judge, Dharmapuri. Hence, this Civil Revision Petition is dismissed. No Costs. Consequently, the

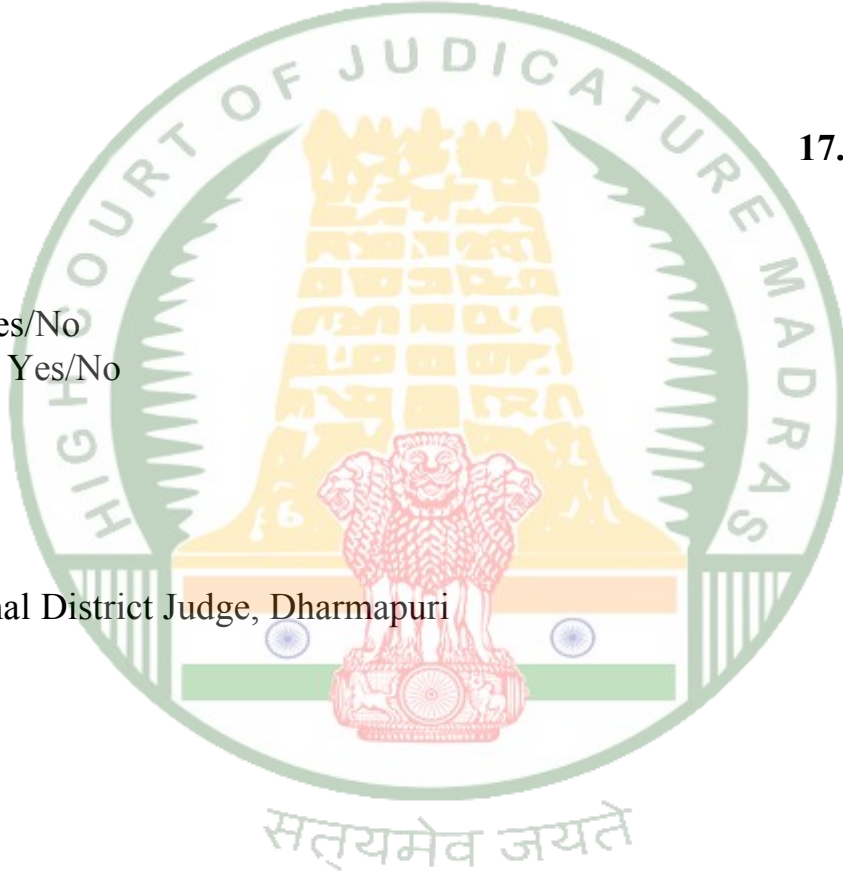
connected miscellaneous petition is closed. It is open to either the plaintiffs or the purchasers to file party implead petition. If any such petition is filed, the trial Court has to dispose of the same in accordance with the law.

17.12.2020

tta

Index :Yes/No
Internet : Yes/No

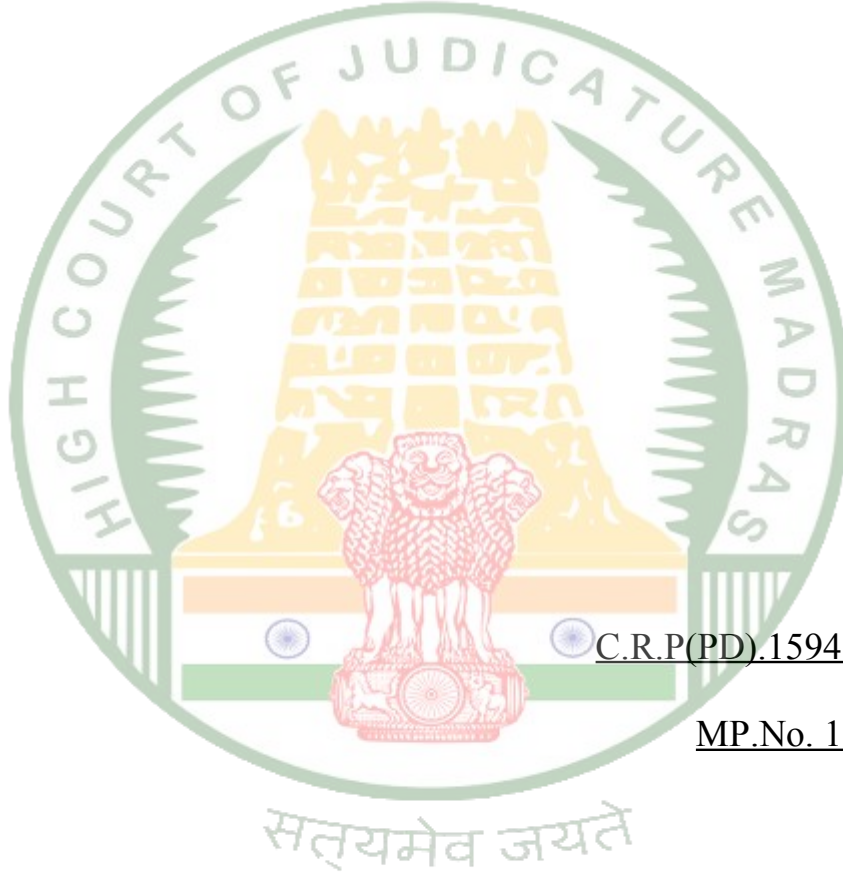
To
Additional District Judge, Dharmapuri



WEB COPY

P.RAJAMANICKAM.J.,

tta



C.R.P(PD).1594 of 2015
and
MP.No. 1 of 2015

WEB COPY

17.12.2020