

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.PD.No.2098 of 2015

and

M.P.No.1 of 2015

Mr.H.Srinivasan

... Petitioner/Plaintiff

Vs.

1. Mr.Ganesan

2. Mr.G.Veeramani

3. Mrs.G.Gayathri Devi

4. Mrs.Jothimani

5. Mrs.Muthulakshmi

6. Mrs.Baby @ Jagadeeswari

7.Mr.Rathinakumar

... Respondents/defendants

... Respondents/Proposed
defendants 4 to 7

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India against the fair and decreetal Order dated 19.01.2015 passed in I.A.No.1683 of 2014 in O.S.No.376 of 2010 on the file of the District Munsif Court, Kangayam, Tiruppur District.

For petitioner

: Mr.S.Saravanan

For respondents

: Mr.Suganthan

for Mr.N.Manokaran – R.4, 5 and 7

No appearance – R1, 2, 3 and 6

ORDER

This revision has been filed against the Order of dismissal of the petitioner's application filed to implead the respondents 4 to 7 as party defendants in the suit.

2. Brief facts leading to filing of this revision is as follows :

The petitioner filed the above suit for partition based on a sale deed executed by the respondents 1 to 3 herein. Pending suit, the present application has been filed to implead the respondents 4 to 7 on the ground that they are also co-owners of the property along with the respondents 1 to 3. It is also further submitted that there is another partition between the respondents 1 to 3 and the respondents 4 to 7, and respondents 4 to 7 have filed a suit in O.S.No.160 of 2008, subsequently, the suit has been decreed in favour of the respondents 4 to 7, and the first appeal filed against the above decree is pending. In the said circumstances, the proposed respondents are claiming title over the suit schedule property and hence, they are also necessary party to the suit. However, the application filed by the petitioner has been dismissed by the trial Court. Challenging the same, the present revision has been filed.

3. Mr.Saravanan, the learned counsel for the petitioner submitted that the proposed respondents 4 to 7 are also claiming right over the suit property and the suit filed by the respondents has been decreed in their favour. The learned counsel further submitted that the petitioner purchased the suit property from the respondents 1 to 3. In the circumstances, the proposed respondents are also necessary party to the suit and without them, the suit cannot be properly adjudicated and the application filed by the petitioner to implead the respondents 4 to 7 ought to be have been allowed by the trial Court.

4. Mr.Suganthan, the learned counsel for the proposed respondents submitted that in respect of the very same property, a partition suit has been filed by the proposed respondents against the respondent 1 to 3 and the suit has also been decreed in favour of the respondents 4 to 7 and the appeal and cross appeal filed in this regard are pending before the appellate Court. The petitioner has filed the present suit in collusion with the respondents 1 to 3 and since, the appeal filed in the above suit is pending, the present suit has to be tried along with the appeal.

5. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents and perused the materials available

on record carefully.

6. It is an admitted fact that the proposed respondents 4 to 7 also claim right over the suit property and they have also filed a suit for partition in respect of a portion of the suit property and got preliminary decree in their favour. Now the petitioner/plaintiff filed an application to implead them as party defendants in the present suit mainly on the ground that they are also interested party in the suit property and without their presence, the suit cannot be adjudicated properly. But the Court below dismissed the application filed by the petitioner mainly on the ground that the plaintiff has failed to demonstrate how the respondents 4 to 7 are proper and necessary party to the suit. It is seen that a suit has been filed by the respondents for partition in respect of a portion of the suit property and the said suit has been decreed in favour of the proposed respondents. Hence, the proposed respondents are also a proper and necessary party to the present suit and in their absence, the suit cannot be adjudicated. The Court below without considering the above said facts erroneously dismissed the application, which is liable to be set aside.

7. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No cost.

VRC

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

To

The District Munsif,
Kangayam,
Tiruppur District



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V.BHARATHIDASAN, J.

VRC



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