

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 06.02.2020

Order Pronounced on : 14.02.2020

CORAM

**THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN**

**C.R.P.NPD.No.2651 of 2019**  
and  
**C.M.P.Nos.17508 & 26081 of 2019**

1. David

2. Anthony

3. Selvam

... Petitioners

Vs.

1. K. Katuri Sumathi

Lakshmanan (died)

2. Sheela Indra Mohan

3. The collector,  
Thiruvallur.

Rangaraj (died)

4. Durairaj

5. Samuel

... Respondents

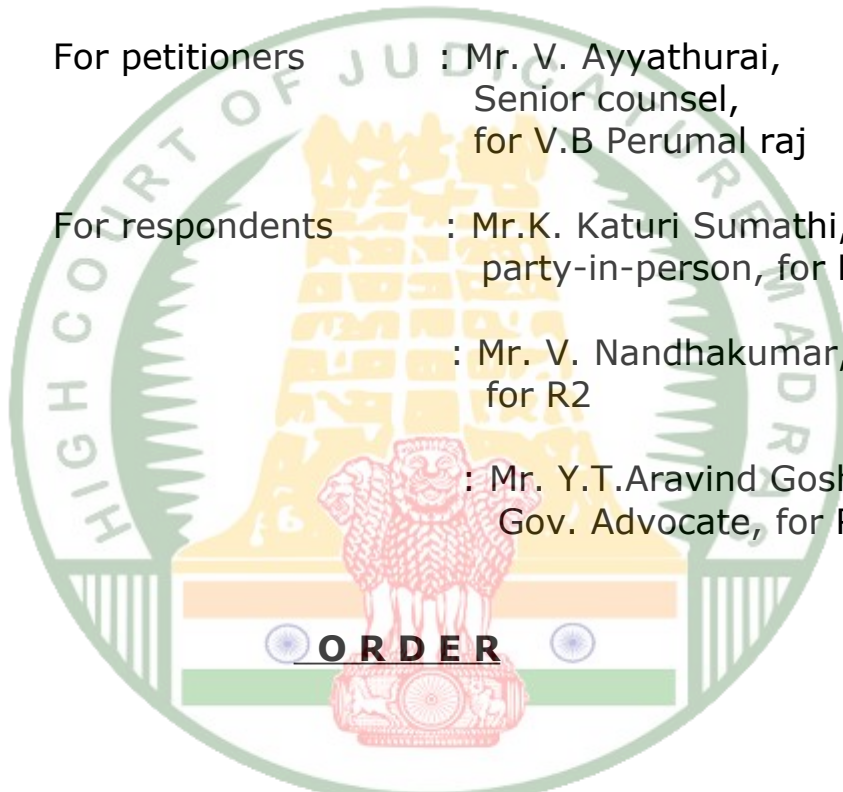
**Prayer :-** This Civil revision has been filed under Article 227 of Constitution of India to set aside the fair order and decreetal order dated 28.06.2019 made in I.a.No.548 of 2015 in indigent O.P.No.13 of 2013 on the file of the Principal District Judge at Thiruvallur by allowing the above Civil Revision Petition.

For petitioners : Mr. V. Ayyathurai,  
Senior counsel,  
for V.B Perumal raj

For respondents : Mr.K. Katuri Sumathi,  
party-in-person, for R1

: Mr. V. Nandhakumar,  
for R2

: Mr. Y.T.Aravind Gosh,  
Gov. Advocate, for R3



The first respondent/plaintiff has filed a petition/plaint under Order 33 Rule 1 CPC to declare him as an indigent person and the same is still pending. The suit has been filed on the ground that, originally, the first respondent/plaintiff has purchased the suit schedule property from the Power of Attorney of one Mr.Issac, and three others through a registered sale deed, and she has constructed a residential building and Cinema Studio in the B schedule property by spending approximately Rs.2

Crores in the year 1988. Subsequently, in the year 1993, the original defendants in this suit had filed a suit in O.S.No.1043 of 1988 on the file of the District Munsiff Court, Poonamallee, for declaration and possession regarding the A schedule property against the said Issac, the vendor of the plaintiff, and others, the first respondent/plaintiff was also added as 5th defendant in the said suit. Pending suit, the defendants herein had entered into a compromise with one Issac, the vendor of the first respondent/plaintiff, stating that the defendants herein are the absolute owners of the property, and the defendants herein agreed to confirm the sale made by the Issac and others. Based on that, a decree has been passed in the said suit. Thereafter, the first respondent/plaintiff, had approached the defendants, but they failed to confirm the sale deed and also demolished the property owned by the plaintiff. In the said circumstances, the present suit has been filed.

2. Originally the first respondent/plaintiff has filed the suit against the plaintiffs in O.S.No.1043 of 1988. In the meantime, the vendor of the first respondent/plaintiff Issac died. Hence, the present application has been filed by the first respondent to

implead the petitioners, who are the legal heirs of the said late Issac, as the party defendants in the suit. The trial Court allowed the application. Now, challenging the same the present revision has been filed.

3. Mr. V. Ayyathurai, learned Senior Counsel for the petitioners would submit that the petitioners are not necessary parties to the suit . Earlier, the suit filed by the defendants herein in O.S.No.1043 of 1988 has been decreed, in which the first respondent/plaintiff was 5th defendant . Challenging the said judgment and decree she filed an appeal and the same was dismissed and the Second Appeal filed by the first respondent/plaintiff also dismissed by this Court. Thereafter, the SLP filed by the first respondent/plaintiff before the Hon'ble Supreme Court also been dismissed. In the said circumstances, the first respondent/plaintiff cannot maintain the present suit to set-aside the judgment and decree passed in O.S.No.1043 of 1988, and the same is barred by resjudicata. Even in the suit, the entire allegation is only against the defendants 1 and 2 herein, and also in the earlier contempt petition filed by the first respondent/plaintiff the revision petitioners' father was not a

party, and hence, the revision petitioners cannot be compelled to contest the suit.

4. Per contra, the first respondent/plaintiff appeared as party in person, and submitted that, she had been cheated by the petitioners' father and the defendants 1 and 2 in the suit. After executing the sale deed and after receiving the entire sale consideration from her, they have entered into a compromise and based on that they have obtained collusive decree, but they failed to comply with the terms of compromise. Since the father of the petitioners alone sold the property to the first respondent herein, they are also necessary party in the present suit. Due to inadvertence, she failed to implead them earlier, hence the present application has been filed and the Court below also considering the facts and circumstances, allowed the application and hence, there is no illegality in it.

5. I have considered the rival submissions and perused the materials available on records.

6. The present suit has been filed to set-aside the earlier judgment and decree passed in O.S.No.1043 of 1988 and also seeking for compensation for demolishing the building. From the perusal of the records, it could be seen that the decree passed in O.S.No.1043 of 1988 has been confirmed upto the Hon'ble Supreme Court. However, the prayer sought in the suit is not only to set aside the decree, but also seeking for compensation for demolition and also to execute the sale deed and hand over possession. Now the suit is yet to be registered, and the application filed by the first respondent/plaintiff under Order 33 Rule 1 to file a suit as indigent person is still pending. At this stage, the present application has been filed by the first respondent to implead the legal heirs of the vendor of the first respondent/plaintiff. Whether the suit is maintainable or not and the first respondent/plaintiff is entitled to get the relief as prayed for in the suit, is all the matter to be decided after registering the suit. At this stage, when an application to file a suit as an indigent person is pending, those issues cannot be decided. Admittedly, the petitioners' father one Issac has only sold the property in favour of the first respondent/plaintiff. Hence, the revision petitioners, who are the legal heirs of the deceased

Issac, are also necessary party to adjudicate all the questions involved in the suit.

7. However, it is always open to the petitioners to raise any objections regarding the maintainability of the suit only after the suit is being registered. Now, at this stage, the petitioners cannot raise all those issues. Considering the above circumstances, the trial Court rightly allowed the application. I find no illegality or irregularity in the order passed by the Court below and I find no merit in the revision.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**14.02.2020**

mrp

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

**To**

The Principal District Court,

Thiruvallur.

**V.BHARATHIDASAN, J.,**

mrp



Pre-delivery Order in

**C.R.P.PD.No.2651 of 2019**

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**14.02.2020**