

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.4220 of 2019 and
C.M.P.No.27533 of 2019

Tamil Selvam ...Petitioner

Vs

1.Sagayamary

2.Vincent

3.Susai

4.Rani

5.Tahsildar

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 05.08.2019 in I.A.No.3889 of 2018 in O.S.No.3958 of 2013, on the file of the Third Assistant Judge, City Civil Court at Chennai.

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For Petitioner : Mr.Virumandi Periyaswami

For Respondents : Mr.N.Manikandan
Government Advocate for R5

ORDER

This Petition has been filed against the order and decree dated 05.08.2019 in I.A.No.3889 of 2018 in O.S.No.3958 of 2013, on the file of the Third Assistant Judge, City Civil Court at Chennai.

2.The suit has been filed by the petitioner herein in O.S.No.3958 of 2013 on the file of the Civil Judge, Chennai, for the relief of permanent injunction with regard to the plaint schedule properties.

3.Pending suit, the petitioner has filed the I.A.No.3889 of 2018, to implead the respondents 2 to 5 as necessary parties to the suit in O.S.No.3958 of 2013. After hearing both sides, the learned Judge dismissed the application with cost, in I.A.No.3889 of 2018 by order dated 05.08.2019, on the ground that there is no material found in the petition, that would show that the proposed parties are proper and relevant parties to the suit in O.S.No.3958 of 2013.

4.Aggrieved against the order the learned trial Judge in I.A.No.3889 of 2018 dated 05.08.2019, the petitioner herein has preferred the present Civil Revision Petition.

5.The learned counsel for the petitioner submitted that the petitioner herein is the plaintiff and he filed the suit for declaration of title with regard to suit schedule properties coupled with the prayer for permanent injunction. In a connected case-O.S.No.5223 of 2011 filed by the 1st respondent herein, an Advocate Commissioner was appointed to inspect the suit properties by warrant dated 02.01.2017. He inspected the suit property with the help of the surveyor and filed a report. In that report, it is stated that some third persons are encroached upon the suit schedule property and also reported that he was unable to identify the property along with title deed measurements. Thereafter the petitioner filed this application in I.A.No.3889 of 2018 to implead the respondents 2 to 5 as a defendants to the suit proceedings. The trial Court dismissed the petition on the ground that there is no material found in the petition to show that the proposed parties are proper and relevant to adjudicate the suit. The order of the trial Court is contrary to law. Further one of the defendants-Vincent, encroached the plaint schedule properties and he is in possession now and also for complete adjudication of the suit, before the trial Court, the parties are necessary to be impleaded and thus pleaded to allow the revision petition.

6.The learned counsel for the 5th respondent supported the order of the trial Court and submitted that there is no allegations found in the affidavit to show that the proposed parties are necessary for adjudication and pleaded to dismiss the revision petition.

7.Heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the documents available on record.

8.Petitioner is the plaintiff, he filed the suit against the defendant-Sagayamary, with a prayer for permanent injunction with regard to A, B and C schedule properties. Considering the Advocate Commissioner's report filed in O.S.No.5223 of 2011, the petitioner herein has filed the I.A.No.3889 of 2018, to implead the respondents 2 to 5 as necessary parties in the suit. Which was dismissed by the trial Court, on the ground that there is no material was submitted by the petitioner herein to sue that they are the proper parties to the suit.

9.I have gone through the affidavit filed by the petitioner in I.A.No.3889 of 2018, in paragraph No.3, the petitioner stated that the 2nd respondent-Vincent, with the help of the defendant in the suit, encroached

upon the suit schedule property. Apart from this contention, there is no particulars about the encroachment was made by the respondents 2 to 4. In the affidavit the petitioner had not stated, when the proposed parties i.e., respondents 2 to 4 encroached the property or when the petitioner came to know about the encroachment. The particulars are absent in the affidavit. Further the 5th respondent is the Tahsildar, Tondiarpet. The petitioner had no cause of action against the 5th respondent.

10. Under these circumstances, in the absence of any cause of action to implead the proposed respondents 2 to 5 cannot be considered as a necessary or proper parties to the proceedings. The trial Court has rightly dismissed the petition in I.A.No.3889 of 2018 in O.S.No.3958 of 2013, dated 05.08.2019, on the file of the Third Assistant Judge, City Civil Court at Chennai. I find no error in the order of the trial Court and hence, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

14.12.2020

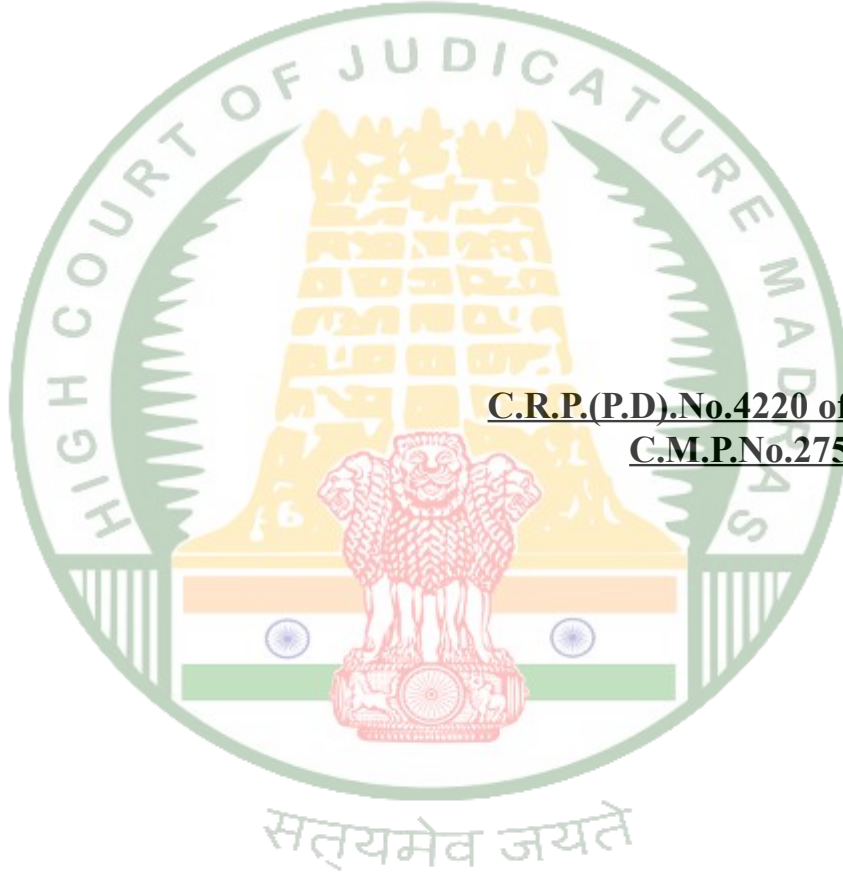
Index: Yes/No
Speaking Order: Yes/No
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C.R.P.(P.D).No.4220 of 2019

V.SIVAGNANAM.J,

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To
The Third Assistant Judge, City Civil Court, Chennai.



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