



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.06.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(MD)No.510 of 2020

and

C.M.P.(MD)No.3309 of 2020

1.N.Muthusamy

2.N.Lingam ... Petitioners/Defendants Nos.2 and 5

Vs.

1.P.Chandrammal ... Respondent No.1/Plaintiff

2.Natarajan

3.Varnam Ammal

4.Palaniammal

5.Chellammal

6.P.Sathiyaseelan

7.P.Anandan ... Respondent Nos.2 to 7/
Defendant Nos.4, 6 to 10

8.The Government of Tamil Nadu
represented through its,
District Collector,
Dindigul District. ... Respondent No.8/Proposed Party.

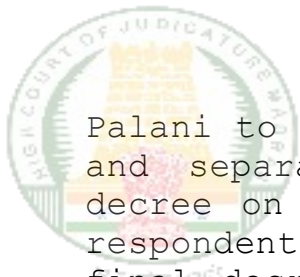
PRAYER: Petition filed under Section 227 of Constitution of India, to call for the records pertaining to the order passed in I.A.No.65 of 2019 in A.S.No.19 of 2018 on the file of the Additional District Court (Fast Track), Palani, dated 04.03.2020 and quash the same and consequently, direct the Additional District Court, (Fast Track), Palani to implead the 8th respondent in A.S.No.19 of 2018.

For Petitioners : Mr.T.A.Ebenezer

ORDER

The first respondent/plaintiff filed a suit as against seven defendants/ petitioners and other respondents 2 to 7 herein, in O.S.No.351 of 1989 on the file of the learned Subordinate Judge,

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Palani to pass a preliminary decree and to allot 1/8th share to her and separate possession. The trial Court passed preliminary decree on 16.09.1993 allotting 1/8th share to the plaintiff/first respondent. Subsequently, the plaintiff / first respondent filed final decree application in I.A.No.118 of 2008 in O.S.No.351 of 1989, on the file of the Sub Court, Palani, for appointment of an advocate commissioner for partition of the property into 1/8th share and to deliver possession. The Court below allowed the final decree application. Challenging the said decree passed by the learned Subordinate Judge, Palani, in O.S.No.351 of 1989, the petitioners herein filed an appeal before the Additional District Court (Fast Track), Palani in A.S.No.19 of 2018. During the pendency of the appeal, the petitioners herein filed an interlocutory application in I.A.No.65 of 2019 in A.S.No.19 of 2018 on the file of the Additional District Court (Fast Track), Palani, to implead the eight respondent/District Collector, Dindigul as a proposed party. The learned Additional District Judge dismissed the petition in I.A.No.65 of 2019, dated 04.03.2020. Aggrieved by the same, this Civil Revision Petition has been filed.

2.The learned counsel appearing for the petitioners would submit that the final decree passed by the Sub Court, Palani in I.A.No.118 of 2008 in O.S.No.351 of 1989, dated 22.01.2018, by dividing the suit property by metes and bounds including the land, in which, a channel runs across the suit property. The channel is running in the suit property for several decades. The land, including the channel which is about 15 feet width, is running completely inside the land in Survey R.S.No.20 and also in R.S.No.18/2A1 of Arasappapillaipatty Village of Oddanchatram Taluk, is allotted to the petitioners/defendants. Since it is a plan marked watercourse, they cannot enjoy the same as absolute owner.

3. The learned counsel appearing for the petitioners would further submit that as per the decision of the Hon'ble Supreme Court and this Court, since all the water course has been brought under the Government control, the ownership and the title of the land under channel is deemed to have been passed on by the Government. Therefore, in view of the said decision, if the Government claims the rights of the channel, they would be the loser. Even in the settlement register, in Survey R.S.No.18/2A1, there is a channel which belongs to the Government. Therefore, in order to get no objection from the Government, the District Collector has to be impleaded as a proposed party.

4. Heard both sides and perused the records.



5.It is seen from the records that the first respondent / plaintiff filed a suit in the year 1989 itself and even in the year 1991, the defendants have filed the written statement. In the written statement, they had not taken any defence that in Survey R.S.No.18/2A1, there is a channel which belongs to the Government and even in the final decree application in I.A.No.118 of 2008, he has not taken a stand in his counter stating that in Survey R.S.No.18/2A1, the channel should be excluded and the portion of the channel should not be allotted to their shares. The petitioners/defendants have not taken any plea from 1989 to 2019. Only after appointing the Advocate Commissioner, the petitioners have filed the petition in I.A.No.65 of 2019 to implead the Government with ulterior motive which is not sustainable under law.

6.Considering the facts and circumstances of the case, this Court does not find any perversity in the order passed by the Additional District Court (Fast Track), Palani in I.A.No.65 of 2019 in A.S.No.19 of 2018. There is no merit in the Civil Revision Petition. Hence, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional District Judge (Fast Track), Palani,
Dindigul District.

C.R.P. (MD)No.510 of 2020

and

C.M.P. (MD)No.3309 of 2020

16.06.2020

KG(CO)

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