



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1037 of 2019

and

C.M.P. (MD)No.5727 of 2019

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Kamakula Okkaliyar (kappu) Mahajana Sangam
Through its President
P.R.Anbalagan
Ward No.3, West Street,
Appipatti @ Alagapuri Village,
Uthamapalayam Taluk,
Theni District.

... Petitioner/1st Respondent
Plaintiff

Vs.

1.Palaniammal ... 1st Respondent/Petitioner/3rd Party

2.Anga Thevar ... 2nd Respondent/2nd Respondent/Defendant

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.10.2018 made in I.A.No.1462 of 2017 in O.S.No.117 of 2012 on the file of the District Munsif, Uthamapalayam by allowing this Civil Revision Petition.

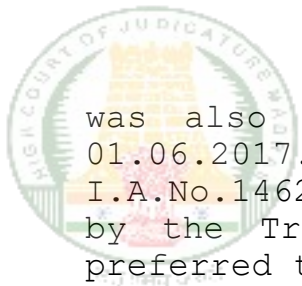
For Petitioner	: M/s. K.Guhan
For R1	: M/s. K.Mahendran
For R2	: No Appearance

ORDER

This petition has been filed challenging the order passed in I.A.No.1462 of 2017 in O.S.No.117 of 2012 on the file of the District Munsif, Uthamapalayam.

2.The petitioner herein is the plaintiff and the first respondent herein is the third party and the second respondent herein is the defendant in the suit.

3.The petitioner has filed a suit in O.S.No.117 of 2012 before the learned District Munsif, Uthamapalayam, for a prayer of bare injunction. The first respondent is a 3rd party in the suit. She filed an Interlocutory Application in I.A.No.716 of 2013 before the Trial Court to implead herself as the second defendant and the same was dismissed on 29.04.2016 on the ground that the first respondent has not filed any material regarding her title over the property. Against which, she has filed a revision petition in C.R.P.(MD) No.1009 of 2017 before this Court for the same prayer and the same



was also dismissed by this Court for the very same reason on 01.06.2017. Again she filed another Interlocutory Application in I.A.No.1462 of 2017 before the trial Court and the same was allowed by the Trial Court. Challenging the said order, the petitioner preferred this revision.

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4.The brief substance of the petition in I.A.No.1462 of 2017 is as follows:-

The petitioner/third party was the president of Appipatty @ Alzhakapuri Village Panchayat. She filed a suit in O.S.No.41 of 2014 against 11 persons for a prayer of bare injunction. The suit property items 1 and 2 were allotted to the villagers of Appipatty @ Alzhakapuri Village and the suit property is kept for the use of the entire public during festivals. The respondent has encroached the above said property and he filed a suit on behalf of the Kamagula Okkaligar (Kappu) in O.S.No.117 of 2012 and the suit was filed by the first respondent collusively with the second respondent. Hence, the petitioner is also to be impleaded in the suit.

5.The petitioner filed an Interlocutory Application in I.A.No.716 of 2013 and the same was dismissed on 29.04.2016. Thereafter, she prepared a revision in CRP.No.1009 of 2017. That petition was also dismissed on 01.06.2017 as the petitioner was no longer the president of the Villlage Panchayat. Now, she obtained the relevant documents and filed the petition to implead herself as the representative of the residents of Appipatti @ Alzhakapuri Village.

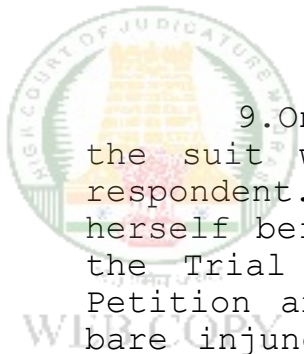
6.Brief substance of the counter filed by the respondent in I.A.No.1462 is as follows:-

The petitioner has not filed a suit in O.S.No.41 of 2014 for declaration of title. No resolution was passed permitting the petitioner to file a suit on behalf of the villagers. The petitioner is not a proper or necessary party.

7.Brief substance of the counter filed by the second respondent/ second respondent is as follows:-

The third item of the suit property is a 'Government Porampokku Land', which is in the enjoyment of the second defendant. The Revenue Inspector has sent a notice to the second respondent. Tax receipts stand in the name of the second respondent. There is no collusion between the first respondent and the second respondent. A third party has no right to file a petition in the representative capacity of the villagers. Only with an intention to drag on the proceedings, this petition was filed by her.

8.The Trial Court after considering both sides allowed the petition. Against which, the revision petitioner filed this revision



9. On the side of the revision petitioner, it is stated that the suit was filed only for bare injunction against the second respondent. The first respondent filed a similar petition to implead herself before the Trial Court and that petition was dismissed by the Trial Court. Against which, she preferred a Civil Revision Petition and that Civil Revision Petition was also dismissed. The bare injunction order is prayed for against the second respondent alone. No material is produced regarding the title of the first respondent/third party. Filing a second petition for the same prayer is not valid. The Trial Court has made observation that the proposed party undertakes to withdraw the suit in O.S.No.41 of 2014. But the suit was not withdrawn but was dismissed for default. No resolution was passed regarding the permission granted to the first respondent/third party to represent on behalf of the villagers.

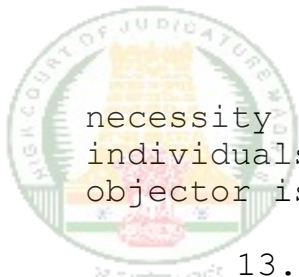
10. On the side of the revision petitioner it is stated that the revision petitioner is the *dominus litis* and he has the right to select who is his opponents. A Judgment of this Court published in 2013 (4) CTC 466 is cited wherein it is decided the following issues:-

"4. It is well settled that the plaintiff being a dominus litis is entitled to choose the person against whom he is seeking the relief. If at all the petitioner is having any grievance against the plaintiffs, it is open to the petitioner to file a separate suit and contest the same against the plaintiffs."

11. A similar judgment of this Court in CRP(PD)No.1793 of 2014 dated 21.01.2016 is cited wherein it is decided as follows:-

"If the suit is for declaration of title and the same has been decreed, it will affect the rights of the third parties. But the present suit is not for declaration of title and it is merely for injunction restraining the defendants from any way disturbing the plaintiffs' peaceful possession and enjoyment of the suit property. It is pertinent to note that in the suit for injunction, the plaintiff has Dominus litis to select the persons as defendants for filing the suit. No one can file an application to enter appearance for allowing him as defendant for effective adjudication. In such circumstances, the application filed by the revision petitioners/third parties is not maintainable."

12. On the side of the first respondent, it is stated that, the earlier petition filed by the first respondent was dismissed only on the ground that she was no longer the president of the particular village and that now, she has come forward with this petition as a representative of the villagers. (There is no



necessity to implead her as a 3rd party in a dispute between two individuals and the suit is only for bare injunction. Only the objector is a necessary party.)

13. On the side of the first respondent, it is stated that at the time of filing of the earlier petition, the first respondent was no longer the president of the village panchayat. Further, in the peace committee meeting conducted by the Revenue Divisional Officer, resolution was passed stating that no one was allowed to enter into the disputed land. An First Information Report is also pending from the year 2015. Now, with the help of Patta issued in their favour, the revision petitioner and the second respondent colluding each other has filed the suit and to avoid multiplicity of cases, the first respondent is to be impleaded as a necessary party.

14. It is seen that there is a dispute between the petitioner and the second respondent, and a suit for bare injunction is filed in O.S.No.117 of 2012. The first respondent filed a suit in O.S.No.41 of 2014 for a prayer of bare injunction. Though, the first respondent questioned the title of the revision petitioner, the first respondent/petitioner did not file a suit for declaration. If the property is a public property then the first respondent did not file petition to implead the Government as one of the party.

15. It is seen that the suit is not for declaration of title. Those who obstruct the enjoyment of a particular person alone has to be added as defendant in a suit for bare injunction. Suit is pending from 2012. Allowing this petition will cause further delay in the case proceedings.

16. In the above circumstances, there is no necessity to implead the first respondent/third person in the suit. The order of the Trial Court passed in I.A.No.1462 of 2017 in O.S.No.117 of 2012 on the file of the District Munsif, Uthamapalayam, is hereby set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The District Munsif,
Uthamapalayam.

2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.GUHAN, Advocate (SR-2611[F] dated 23/01/2020)

+1 CC to Mr.K.MAHENDRAN, Advocate (SR-2667[F] dated 23/01/2020)

**C.R.P. (PD) (MD)No.1037 of 2019
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VB(24.02.2020) 5P 6C