



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.1018 of 2019

and

C.M.P. (MD)No.5604 of 2019

WEB COPY

Eswaran

...Petitioner/Petitioner
/third party Plaintiff

vs.

1.Ganeshan

2.Murugan

3.Paramasivam

...Respondents/Petitioners
/Defendants

4.Murugeshan

...Respondent/2nd Petitioner
/Plaintiff

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order passed in I.A.No.413 of 2018 in O.S.No.119 of 2012 dated 19.12.2018 on the file of the District Munsif Court, Bodinayakanur.

For Petitioners: Mr.P.Yasmin Begum

For R4 : Mr.Pradeep

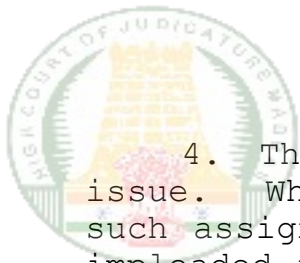
ORDER

This revision is laid by the son of the plaintiff to implead himself as proposed second plaintiff.

2.The brief facts are that the suit was laid for bare injunction. Pending suit, the plaintiff had executed settlement deed, dated 28.10.2013 and thereafter, became bedridden in a road accident. The petitioner contends that the pendency of the suit was not informed to him by his father. Therefore, he wants to implead himself in the suit. For which purpose, he laid a petition under Order 1 Rule 10 (2) CPC. This was opposed by the contesting defendants 1 to 3 on the ground that the proposed second plaintiff / revision petitioner herein is not in possession of the property and even the Commissioner has found that the father of the revision petitioner / fourth respondent herein is in possession. Accepting the same, the trial Court has dismissed the petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>



4. The trial Court in essence has mis-addressed the whole issue. When pending suit, title is assigned lawfully, then under such assignment, the assignee has every right to have he or she be impleaded under Order 22 Rule 10 C.P.C. Secondly, reliance on the Commissioner report to enter finding on possession is the travesty of the principle that the Commissioner's report cannot be relied on for entering a finding on possession. Thirdly, as on today, only the revision petitioner has *locus standi* to maintain the suit, which was instituted by his father, more so when the father himself is not disputing the participation of his son. The approach of the trial Court in this case is far distanced from the approach which procedure contemplates.

5. Accordingly, the order made in I.A.No.413 of 2018 is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ta/msa

To

1.The District Munsif Court,
Bodinayakanur.

2.The Section Officer
V.R.Section, Madurai Bench of Madras High Court,
Madurai(2 Copies)

+1 CC to M/s.P. YASMIN BEGUM, Advocate (SR-19681[F] dated
12/10/2020)

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NR (28/10/2020) 2P : 5C