



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P.(PD)(MD)No.2244 of 2015

WEB COPY

Gnanambal : Petitioner/1st Respondent/
Plaintiff

.. Vs ..

1. St.Mary's Higher Secondary School,
represented by its Correspondent,
Fr.Rohar Dhanraj,
Pudukottai. : 1st Respondent/Petitioner/
Proposed 4th Defendant

2. Arockiasamy

3. Vadivel

4. Suresh : Respondent 2 to 4/Respondent 2 to 4/
Defendants 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair order and decreetal order in I.A.No.208 of 2015 in O.S.No.226 of 2014 on the file of the District Munsif Court, Pudukottai, dated 11.08.2015.

For Petitioner :Mr.N.Balakrishnan
For R1 :Mr.J.Anandkumar
For R2 :Mr.V.Meenakshi Sundaram
For R3 and R4 :No appearance

ORDER

This Civil Revision Petition is directed against the order passed by the learned District Munsif, Pudukottai, in I.A.No.208 of 2015 in O.S.No.226 of 2014, dated 11.08.2015.

2.Heard the learned Counsel appearing for the petitioner, learned Counsel appearing for the first respondent and the learned Counsel appearing for the second respondent.

3.The revision petitioner is the plaintiff and he filed the suit in O.S.No.226 of 2014 before the District Munsif Court, Pudukottai, for permanent injunction restraining the defendants from interfering with him peaceful possession and enjoyment of the suit property. The suit property consists of two items. A schedule



property is shown as a property comprised in S.No.5363/2 measuring to an extent of 32 cents. B schedule property is shown as a property comprised in S.No.5363/3 measuring to an extent of 3700 sq.ft.

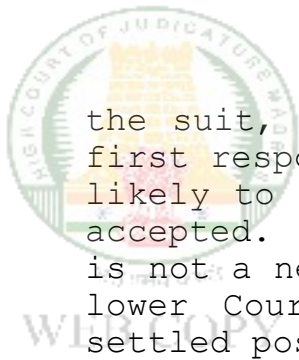
4. During the pendency of the suit, the first respondent herein filed a petition in I.A.No.208 of 2015 in O.S.No.226 of 2014 and similarly, another party, namely, M/s.Sacred Heart Higher Secondary School, represented by its Correspondent, Pudukottai District, filed another petition in I.A.No.209 of 2015 in O.S.No.226 of 2014, to implead them as parties to the suit in O.S.No.226 of 2014. The learned District Munsif, Pudukottai, allowed both petitions. The plaintiff in the suit filed C.R.P.(MD)Nos.433 of 2017 and 2244 of 2015 challenging the orders in I.A.No.209 of 2015 and I.A.No.208 of 2015 respectively.

5. The revision petition preferred as against the order in I.A.No.209 of 2015 was allowed by this Court, by order, dated 13.11.2019, by holding that the first respondent therein (proposed party) is not a necessary or proper party, as no claim or relief is claimed against them in the suit. While allowing the said revision petition, this Court followed the judgment of Honourable Supreme Court in the case of **Niyamat Ali Molla vs Sonargon Housing Co-operative Society Limited and others**, reported in 2008 (1) CTC 161.

6. Though the first respondent in this revision petition and the first respondent in C.R.P.(MD)No.433 of 2017 are different, having regard to the facts, which are identical, the order in C.R.P.(MD) No.433 of 2017 can be relied upon as a precedent. Above all, it is well settled that the plaintiff has a privilege to decide against whom, he should seek relief. It is a general principle that by impleading a third party to the suit, the scope of suit cannot be enlarged or expanded to cover any issue, which does not arise for consideration in the suit as such.

7. Having regard to the settled principles, this Court is of the view that the first respondent herein is not a necessary or proper party, especially, when no relief is claimed as against them by the plaintiff. The learned Counsel for the first respondent relied upon the portion of the plaint, in which, it is stated that a Catholic Mission had diverted the water course, so as to obliterate the northern part of the suit property, which was washed away by the water. This is not sufficient for the first respondent to get themselves as party to the suit. Secondly, no prejudice is likely to be caused, if the suit is tried and disposed of without impleading the first respondent as party.

8. It is stated that the first respondent does not claim any right under any of the defendants in the suit. Hence, when the claim of first respondent is independent and he is not a party to



the suit, the decree or judgment of the suit is not binding on the first respondent and therefore, saying that the suit, if decreed, is likely to affect the first respondent's right or interest cannot be accepted. Hence, this Court is convinced that the first respondent is not a necessary or proper party to the suit. Hence, the order of lower Court is contrary to the well settled principles and the settled position.

9.Hence, this Civil Revision Petition is allowed and the order passed by the the learned District Munsif, Pudukottai, in I.A.No.208 of 2015 in O.S.No.226 of 2014, dated 11.08.2015, is set aside. No costs. It is open to the first respondent to file an independent suit to establish their right either against the plaintiff or anyone. The pendency of the suit will not affect such suit, if filed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The District Munsif, Pudukottai.

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

+1 CC to Mr.N.BALAKRISHNAN, Advocate SR-18297.

C.R.P. (PD) (MD)No.2244 of 2015
28.09.2020

KM(CO)
CS(13.10.2020) 3P 5C