



WEB COPY

C.R.P.(NPD)(MD)Nos.1807 and 1808 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (NPD) (MD) Nos.1807 and 1808 of 2019

and

C.M.P. (MD) No.9292 of 2019

CRP (NPD) (MD) .No.1807 of 2019

Rajah R.Raja Raja Gopala Thondaiman ... Petitioner/1st respondent
/Plaintiff

Vs.

1.Lurdusamy

2.Kumar

3.Srinivasan

4.Thomas

5.The President,

Pudukkottai Munnal Grama Adhikarigal

Urimai Paadhukappu Committee,

Office at Aadhi Dravidar House,

Karambakudi Taluk,

Pudukkottai District.

..1-5, respondents/2-6 respondents
/1 to 5 defendants

6.Karthick V.R.Thondaiman

...6th Respondent/Petitioner/
/Proposed 6th defendant

CRP (NPD) (MD) .No.1808 of 2019

Rajah R.Raja Raja Gopala Thondaiman ... Petitioner/1st respondent
/Plaintiff

Vs.

1.Lurdusamy

2.Kumar

3.Srinivasan

4.Thomas

5.The President,

Pudukkottai Munnal Grama Adhikarigal

Urimai Paadhukappu Committee,

Office at Aadhi Dravidar House,

Karambakudi Taluk,

Pudukkottai District.

..1-5, respondents/2-6 respondents
/1 to 5 defendants



6.T.V.Karuppaiah

..6th Respondent/Petitioner/
/Proposed 6th defendant

COMMON PRAYER: These Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.08.2019 in I.A.No.150 of 2019 and I.A.No.222 of 2018 in O.S.No.82 of 2018 on the file of the Principal District Judge, Pudukkottai.

For Petitioner : Mr.S.Parthasarathy Senior counsel
for Mr.K.Govindarajan
(in both CRPs)

For Respondents : Mr.K.Baalasundharam for R1,R3 & R4
(in both CRPs)

Mr.VR.Shanmuganathan for R6
in CRP(MD).No.1807/2019

Mr.R.Shankar Ganesh for R6
in CRP(MD).No.1808/2019

No appearance for R5
(in both CRPs)

COMMON ORDER

These two Civil Revision Petitions are filed by the plaintiff in O.S.No.82 of 2018, wherein he challenges an order directing impleadment of two parties, both of who are third parties to the suit, as additional 6th and 7th defendants. The parties would be referred to by their rank before the trial Court.

2.1. The brief facts relevant for the purpose are:-

- The plaintiff himself is the son of Raja Rajagopala Thondaiman, (senior), erstwhile ruler of the Princely State of Pudukkottai and his brothers are Vijaya Raghunatha Thondaiman and Radhakrishna Thondaiman. The Princely State of Pudukkottai was merged with the Union of Tamil Nadu on 01.03.1948.
- At the relevant point of time, there were part time Village Officers, for whose benefit, a gift deed was executed on 09.11.1960 by the father of the present plaintiff in favour of the Committee of part time village officers. Later, the part time village officers came to be abolished Vide Tamil Nadu Act 3/1981. According to the plaintiff, by virtue of abolition of part time Village Officers, the gift deed dated 09.11.1960 ceased to exist, and necessarily, the property should revert



back to the donor.

- The plaintiff added that those part time village officers, though do not have any right to occupy the suit property any longer, had requested the plaintiff to permit them to be in possession of the suit property, and he allowed it. However, they created a lease deed for 98 years in favour of the fourth defendant with no authority, and in terms of the gift deed, it is a violation of its terms.

2.2. In substance, the case of the plaintiff is that the right of the part time village officers to hold the possession is available only as long as that post remained and when that post was abolished, the property shall revert back to him. Secondly, post the abolition of part time village officers, those who were granted further right to be in possession based on the permission granted by the plaintiff is more in the nature of licensee. Thirdly, at any rate, creating a lease, such as one that was created in favour of the fourth defendant is in gross breach of the terms of the gift deed.

3.1. I.A.No.150 Of 2019 came to be filed by a certain Karthick Thondaiman, the 6th respondent in CRP(MD).No.1807 of 2019 to implead himself as the sixth defendant in the suit. He is the son of Late.Vijaya Raghunatha Thondaiman, one of the brothers of the donor of the 1960 gift deed. His brief contention is that the suit property continued as a Hindu Joint Family property till 15.01.1976, that, on that date, a partition was effected by the plaintiff's father, his father and their uncle Radhakrishna Thondaiman. In that partition, this property was not included, essentially because the office of part time Village Officers was not abolished then. According to him, when once the part time village office was abolished, it is not the plaintiff who gets the property, but it is the joint family to which the property reverts, and that he would then be entitled to a share in the suit property.

3.2. This was opposed by the plaintiff on the ground that he is the *dominus litis*, that no part of the cause of action has arisen against him, nor any remedy is sought against him, and in the eventuality of the decree being passed, no right, title or interest of Karthick Thondaiman/sixth respondent in CRP(MD).No.1807 of 2019 is likely to be affected.

4.The trial Court considered both the petitions and held that Karthick Thondaiman, who wants to implead himself as the sixth defendant was, though not a necessary party to the proceedings, still may be a proper party and ordered his impleadment as additional sixth defendant. This is now in challenge at the instance of the plaintiff in the in CRP(MD).No.1807 of 2019.



5.Be that as it may, a certain tenant of the suit property has filed I.A.No.222 of 2018 to implead himself as the seventh defendant in the suit. This petition was allowed by the trial Court and this is under challenge in CRP(MD).No.1808 of 2019.

CRP(MD).No.1807/2019:

6.The learned counsel for the revision petitioner would argue that the scope of the litigation is such that the dispute, which the sixth respondent now raises cannot be accommodated within the frame work of the suit.

7.Mr.VR.Shanmuganthan, learned counsel appearing for the sixth respondent in CRP(MD).No.1807 of 2019 would submit that the dispute between the parties is that in January, 1976, the family properties were partitioned between the father of the plaintiff, father of the sixth respondent and their uncle Radhakrishna Thondaiman and that the suit property was not included essentially because the partition had taken place prior to Tamil Nadu Act 3/1981. He argued that in the eventuality of the suit being decreed, the sixth respondent would then be entitled to 1/3 share in the suit property and to that extent, he has a subsisting interest to be in the party array. He added that even though the trial Court has considered him only as a proper party, given the context of the case, the sixth respondent herein ought to be treated as a necessary party to the litigation.

8.This Court carefully considered the rival submissions and considers that there is merit in the submissions of the learned counsel for the revision petitioner. It is not about the revision petitioner/plaintiff being *dominus litis*, nor it is about the power of the Court to implead parties under Order 1 Rule 10(2) of the Civil Procedure Code, but, about the title to the suit and the nature and scope of the cause of action that matters. Here is a scenario, were the gift was admittedly made by Certain Rajagopala Thondaiman (senior) sometime in 1960. Whether he had granted gift representing the joint family, or has he granted it in his individual capacity is alien to the present cause of action. Dehors that contention, the present plaintiff has title to sustain the present cause of action for maintaining and sustaining the suit. In this scenario, it may not be appropriate for this Court to thrust the sixth respondent herein on an unwilling plaintiff.

9.This Court therefore finds that the presence of the sixth respondent herein is not required for the conduct of the trial of the suit.

10.Having stated thus, this Court also records that it is open to the sixth respondent in CRP(MD).No.1807 of 2019 to establish his independent title in a separate suit or proceedings before the



appropriate forum, if he is so desirous.

CRP (MD) .No.1808/2019:

11.The learned counsel for the sixth respondent in CRP(MD).No.1808 of 2019 would submit that the sixth respondent is the tenant of the property and in the eventuality of the revision petitioner/plaintiff being granted a decree for recovery of possession, there is a greater possibility that his right to be in possession as a tenant is likely to be affected. He also added that as per his instructions, the tenant who is now impleaded as the seventh defendant is not in physical possession but has vacated even a decade ago.

12.The sixth respondent in this revision petition(petitioner in I.A.No.222 of 2018 before the trial Court) is in possession of the suit property is a contentious fact, which can be resolved only during trial.

Result :

CRP (MD) .No.1807/2019:

13. In conclusion, the CRP(MD).No.1807 of 2019 is allowed and the order passed in I.A.No.150 of 2019 on 03.08.2019 is set aside subject to the above observation mentioned in the last preceding paragraph. Since C.R.P.(MD)No.1807 of 2019 is allowed, the sixth respondent (petitioner in I.A.No.222 of 2018) in C.R.P.(MD)No.1808 of 2019 must be arrayed as sixth defendant in the suit. No costs. Consequently, the connected miscellaneous petition is closed.

CRP (MD) .No.1808/2019:

13.2.This Court does not find any impropriety or irregularity in the order passed by the trial Court. Further, this Court does not find any merit in this petition. Accordingly, CRP(MD).No.1808 of 2019 is dismissed. No costs.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Court, Pudukkottai.

2.The Section Officer

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

+2 CC to M/s.K. GOVINDARAJAN, Advocate (SR-19722 & 19723[F] dated
12/10/2020)

C.R.P. (NPD) (MD) Nos.1807
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NA (CO)

TR(19.11.2020) 6P 6C