

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.1861 of 2015
and
M.P.No.1 of 2015

Muthusamy

.. Revision Petitioner

Versus

1.Kamaraj

2.Subramani

3.The President

R.Pudhupalayam Panchayat,
Rasipuram Taluk,
Namakkal District.

4.The Head Master,

Primary Panchayat Elementary School,
Sanarputhur,
Rasipuram Taluk,
Namakkal District.

5.R.Natesan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decretal order in I.A.No.564 of 2014 in I.A.No.470 of 2013 in O.S.No.180 of 2012 dated 03.12.2014 on the file of the Principal District Munsif, Rasipuram.

For Petitioner : Mr.N.Suresh

For Respondents :

For R1 & R2 : No appearance

For R3 & R4 : Dr.S.Suriya
Government Advocate

ORDER

The learned counsel for the petitioner appeared and already submitted his arguments.

2. There is no representation for the respondents 1 & 2.

3. The petitioner is challenging the order dated 03.12.2014 passed by the trial Court in I.A.No.564 of 2014 in I.A.No.470 of 2013 in O.S.No.180 of 2012.

4. The petitioner herein has filed I.A.No.470 of 2013 before the District Munsif Court, Rasipuram to implead him as necessary party to the suit in O.S.No.180 of 2012, based upon the claim that he is having right over the suit property in Survey Nos.59/5 and 59/8. So, he prayed to implead him as

necessary party to the suit. The respondents 1 & 2/ plaintiffs filed an I.A.No.564 of 2014 seeking permission to cross-examine the petitioner / 3rd party in I.A.No.470 of 2013.

5.On hearing both sides, the learned trial Judge allowed that application, thereby permitting the respondents 1 & 2 / plaintiffs to cross-examine the petitioner Muthusamy in the impleading application. Aggrieved by the said order, the petitioner has preferred this revision petition.

6.At the time of arguments, the learned counsel for the petitioner appeared and submitted that for the past two hearings, there is no representation for the respondents 1 & 2.

7.On a perusal of the records, it reveals that, the suit was filed in the year 2012 in O.S.No.180 of 2012 on the file of the District Munsif Court, Rasipuram, for the relief of injunction and other consequential relief. In the year 2013, the petitioner filed an impleading petition seeking permission to implead him as necessary party, as he is having right over the suit property. Simultaneously, in that application, the plaintiffs seek permission of the

Court in I.A.No.564 of 2014 to cross-examine the impleading petitioner. The trial Court concluded that, “whether he is necessary party to the proceeding or not, has to be decided only after hearing his evidence as well as the documents submitted by him in the impleading application?” accordingly permitted the plaintiff to cross-examine him.

8.The said finding was strongly objected by the learned counsel for the petitioner stating that, only he prays the trial Court to implead him as necessary party to the proceeding. After allowing the said application only, he could file his written statement as well as his documents. Thereafter, the plaintiffs as well as other defendants are entitled to cross-examine him. So he prayed to set aside the order passed by the learned trial Judge in I.A.No.564 of 2014.

9.On considering the fact that Civil Suit is pending before the trial Court, and on adducing the oral and documentary evidence, the Court would adjudicate the right of the parties and not in the middle stage of the suit. So far, the impleading petition filed by the petitioner is taken up by the trial Court. At that stage, there is no necessity to cross-examine the impleading

petitioner. But, without considering this legal aspect, the trial Court erroneously allowed the petition filed by the plaintiffs seeking permission to cross-examine the impleading petitioner, without giving an opportunity to him to defend his case. Hence, the order passed by the learned trial Judge as such is not maintainable in law.

10. Accordingly, this revision petition is allowed and the order passed by the learned trial Judge in I.A.No.564 of 2014 is set aside. The trial Court is directed to dispose of I.A.No.470 of 2013 within a period of 4 weeks from the date of receipt of a copy of this order and further directed to dispose of the suit in O.S.No.180 of 2012 within a period of 6 months from the date of disposal of I.A.No.470 of 2013. Consequently connected Miscellaneous Petition is Closed. No costs.

01.10.2021

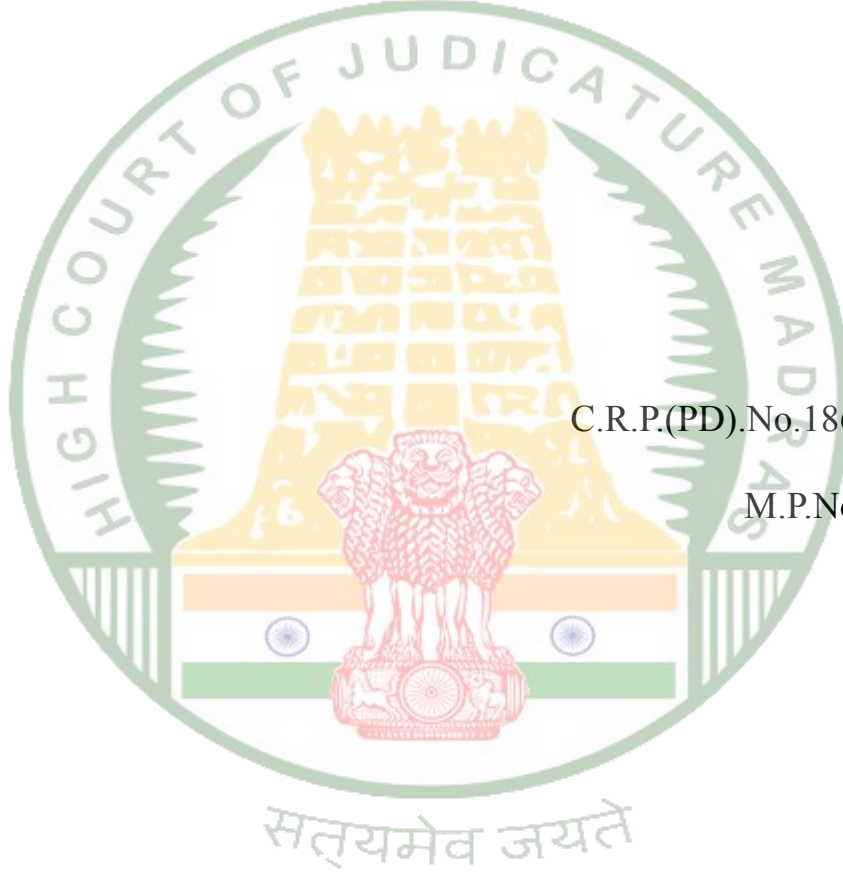
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To
1. The learned District Munsif,
Rasipuram.

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T.V.THAMILSELVI, J.

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