



CRP.PD.No.615/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.615/2019 & CMP.No.4116/2019

[Hybrid Mode]

1.Adhilakshmi
2.Vedagiri
3.Veerasamy

.. Petitioners /
Plaintiffs 1, 3 to 5

Vs.

Munusamy Reddiar [Died]

1.Rajendiran Reddiar
2.Santhana Kumar
3.Baskar
4.Revathi
5.Selvi

6.Perumal

.. RR 1 to 5
/ Defendants
.. 6th Respondent
/ 2nd Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.10.2018 passed in IA.No.1150/2018 in OS.No.305/2012 on the file of the Court of District Munsiff, Madurantagam.



CRP.PD.No.615/2019

WEB COPY

For Petitioners : Mr.S.Sriram
For RR 1 to 5 : Mr.S.Senthilnathan

ORDER

- (1) This Civil Revision Petition is directed against the order dated 04.10.2018 made in IA.No.1150/2018 in OS.No.305/2012 on the file of the Court of the District Munsif, Maduranthagam.
- (2) Plaintiffs 1, 3, 4 and 5 are the revision petitioners in the above Civil Revision Petition. The revision petitioners along with the 6th respondent herein filed a suit in OS.No.305/2012 on the file of the learned District Munsif, Maduranthagam, for declaration of title and for recovery of possession in respect of the suit property which is also the subject matter of earlier suit in OS.No.349/2002 which was filed by the 6th respondent herein for bare injunction.
- (3) The revision petitioners claimed that they are the legal heirs of one Thiru.Dhasiri. It is not in dispute that the 6th respondent herein is also one of the sons of the said Thiru.Dhasiri. It is admitted that the 6th respondent herein filed a suit earlier in OS.No.349/2002 before the same Court against the father of the 1st defendant/1st



CRP.PD.No.615/2019

WEB COPY

respondent for bare injunction. The said suit was dismissed on merits.

(4) The revision petitioners herein filed IA.No.1150/2018 in OS.No.305/2012 to transpose the 2nd plaintiff as the 7th defendant in the said suit on the ground that the 2nd plaintiff who was examined as PW1 in the previous suit in OS.No.349/2002, has deposed against the interest of the revision petitioners herein. It is further stated that the 2nd plaintiff had acted against their interest in the previous suit in OS.No.349/2002 and therefore, he should be transposed as the 7th defendant in the interest of justice and for an effective adjudication. The said Interlocutory Application was dismissed by the Lower Court and aggrieved by the same, the present Civil Revision Petition is filed.

(5) The learned counsel for the petitioners submitted that the Lower Court has failed to see the conflict of interest between the revision petitioners and the 2nd plaintiff and therefore, the order passed by the Lower Court is vitiated. It is further submitted by the learned counsel that the plaintiffs have every right to chose their opponent



CRP.PD.No.615/2019

WEB COPY

as *Dominus Litis*. The learned counsel also submitted that the Lower Court failed to consider the serious prejudice that is caused to the petitioners in view of the conflict of interest between the revision petitioners and the 2nd plaintiff and that, the only remedy available to the petitioners herein is to transpose the 2nd plaintiff as the 7th defendant.

- (6) In paragraph No.7 of the plaint in OS.No.305/2012, the revision petitioners have stated as follows:-

"7.The plaintiffs submit that the 2nd plaintiff herein has filed a suit before this Hon'ble Court against the 1st defendant in OS.No.349/2002 for the relief of bare injunction which was dismissed by this Hon'ble Court on the ground that the 2nd plaintiff was not in the possession of the suit property on the date of filing the above suit. Hence, the plaintiffs are filing the present suit for the relief of declaration and recovery of possession."

- (7) It is also admitted that the same counsel who is representing the plaintiffs in the present suit, was engaged in OS.No.349/2002.

When the present suit is a continuation of OS.No.349/2002 as



CRP.PD.No.615/2019

WEB COPY

alleged by the plaintiffs in the plaint, it can be taken that the petitioners herein have identified themselves with the 2nd plaintiff while drafting the plaint to show that they have a joint/common cause of action against the respondents in the Civil Revision. The revision petitioners have filed IA.No.1150/2018 for transposing the 2nd plaintiff as 7th defendant only when the respondents filed a petition under Order 7 Rule 11 CPC based on the judgment and decree in the previous suit in OS.No.349/2002. All these facts clearly indicate that the petitioners herein seek to transpose the 2nd plaintiff as the 7th defendant so as to escape from the legal implications of the previous suit filed by the 6th respondent herein/2nd plaintiff. Having admitted that the present suit is the continuation of the earlier suit and that the same is filed for recovery of possession after the dismissal of the earlier suit, this Court is unable to find any bona fides in the application to transpose the 2nd plaintiff as the 7th defendant.

- (8) The Lower Court has dismissed the Interlocutory Application mainly on the ground that the revision petitioners are aware of the



CRP.PD.No.615/2019

WEB COPY

fact that the 2nd plaintiff had deposed against their interest. Since the same counsel was again engaged to prosecute the present suit in OS.No.305/2012, the revision petitioners cannot contend that they have no knowledge about the statement given by the 2nd plaintiff himself in the previous suit in OS.No.349/2002.

(9) For want of bona fides, this Court is unable to find any error in the decision of the Lower Court in dismissing the Interlocutory Application filed by the revision petitioners.

(10) In the result, the present Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

07.12.2021

AP

Internet : Yes

To

The District Munsif
Maduranthagam.



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CRP.PD.No.615/2019

S.S.SUNDAR, J.,

AP

CRP.PD.No.615/2019

07.12.2021