

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 31.03.2021**

**CORAM**

**THE HON'BLE Mr. JUSTICE P.D. AUDIKESAVALU**

**C.R.P. (PD) No. 2307 of 2013  
and  
M.P. No. 1 of 2013**

1. Krishnan (Died)
2. Pankajam
3. Padmapriya
4. Sureshkumar
5. Gobinath
6. Sivakami
7. Lakshmi

... Petitioners

-VS-

1. Arulmigu Soleeswar Swami Alagaraya Perumal Kovil  
& Sellandiamman Kovil,  
Mallasamudram,  
Rep. by its Managing Trustee M. Ramasamy,  
S/o. Muthu Gounder,  
Velappa Gounder Thottam, Umayampatti,  
Mangalam Post, Aattaiyampatti Via,  
Tiruchengode Taluk,  
Namakkal District.

2. The Executive Officer,  
Mallasamudram Town Panchayat,  
Mallasamudram Town & Post,  
Tiruchengode Taluk,  
Namakkal District.

... Respondents

**Prayer:-** Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and decreetal order of the Additional District Munsif Court at Tiruchengode dtd 12.04.2013 in I.A. No. 226 of 2011 in O.S. No. 192 of 2010.

For Petitioners : Mr. P.Valliappan

For Respondents : Mrs. AL.Ganthimathi (for R1)

Mr. V.P.S. Jagan,  
Government Advocate (C.S.) (for R2)

**ORDER**  
**(through video conference)**

The Civil Revision Petition arises out of the order dated 12.04.2013 in I.A. No. 226 of 2011 in O.S. No. 192 of 2010 on the file of the Additional District Munsif Court, Tiruchengode (hereinafter referred to as the 'Trial Court' for short). The parties are hereinafter referred to as per their description in the suit in O.S. No. 192 of 2010 before the Trial Court for the sake of clarity and convenience.

2. The Defendant in the suit, viz., The Executive Officer, Mallasamudram Town Panchayat, Tiruchengode Taluk, Namakkal District had issued a notice dated 10.06.2010 to the Plaintiff stating that he has encroached to the extent of 0.445.0 sq.m.in the road poramboke in S. No. 437 in Mallasamudram Town Panchayat and had put up a terraced house, and had called upon him to remove the said encroachment, failing which he was required to show cause as to why that encroachment should not be removed. The Plaintiff had challenged the said noticed in the suit in O.S. No. 192 of 2010 before the Trial Court. An application in I.A. No. 226 of 2011 was filed by Arulmigu Soleeswar Swamy, Alagaraya Perumal and Sellandiamman Temples, Mallasamudram, represented by its Managing Trustee, M. Ramasamy (hereinafter referred as the 'Proposed Party' for short) under Rule 10(2) of Order I of the Code of Civil Procedure, 1908, for impleading as the Second Defendant in that suit. Though the Plaintiff opposed the said application, the Trial Court ordered the same by order dated 12.04.2013, which is assailed by the Plaintiff in this Civil Revision Petition.

3. Heard Mr. P.Valliappan, Learned Counsel for the Plaintiff, Mrs. AL. Ganthimathi, Learned Counsel for the Proposed Party and Mr. V.P.S.Jagan, Learned Government Advocate (C.S.) appearing for the

Defendant and perused the materials placed on record, apart from the pleadings of the parties.

4. Learned Counsel for the Plaintiff contends that the Proposed Party, who does not claim, much less have, any right over the suit property is not a necessary party to the suit and that by impleading the Proposed Party, an entirely different cause of action is sought to be agitated in the suit filed by the Plaintiff who cannot be compelled to fight a person against whom he is not willing to do so. That apart, it is pointed out that if at all the Proposed Party seeks any right in respect of the suit property, it could be done only by way of an independent suit and not by impleading as another Defendant in the suit filed by the Plaintiff challenging the notice dated 10.06.2010 issued by the Defendant for removal of encroachment in the suit property.

5. Learned Counsel for the Proposed Party responds that it is the specific case of the Proposed Party that the suit property has been used all along as a public pathway through which its Temple Car would access every year and the encroachment made by the Plaintiff hinders its free movement. It is highlighted that any recognition of right in favour of the Plaintiff in the suit property would prejudicially affect the Proposed Party to assert the right to access through the

suit property and as such, no exception could be taken to the impugned order permitting the Proposed Party to be impleaded as the Second Defendant in the suit, which would also avoid multiplicity of proceedings.

6. Having regard to the rival submissions, the question that arises for determination in this Civil Revision Petition is whether the Trial Court is justified in impleading the Proposed Party as the Second Defendant in the suit. The law on impleading a third party in a suit has been aptly explained on a conspectus of judicial decisions by the Renowned Author, Hon'ble Mr. Justice C.K.Thakkar (Former Judge, Supreme Court of India) in the Commentaries on the Code of Civil Procedure (Edition 2005), Volume 3 at Page Nos. 132 and 133, as follows:-

***"Plaintiff - dominus litis***

*It is well settled that a Plaintiff is dominus litis. It is for him to choose his opponent and to claim relief against him. It is neither the province nor the concern of the Court to tell him to join any person as a party to a suit and to fight against him. If a Plaintiff does not join the necessary or proper party, consequences will ensue and he will suffer. it is not a matter for*

*the Court to worry about.*

*At the same time, however, when a suit is instituted by a Plaintiff, it has to be decided by a Court on merits in accordance with law after extending an opportunity of hearing to all the parties likely to be affected. The Court, inter alia, will take into account a relevant and germane consideration that, to the extent possible, all questions raised in the suit should be finally and effectually decided by avoiding multiplicity of proceedings. For that purpose, wherever a Court finds that the presence of any particular person is necessary to decide the controversy raised in the suit, and the said person has not been made a party, it can implead him as a party notwithstanding the doctrine of dominus litis and irrespective of an objection by the Plaintiff.*

*The test is not whether the Plaintiff agrees or not to such an addition of a party, but whether the relief sought by the Plaintiff will directly affect the intervener in the enjoyment of his rights."*

The facts of the present case reveal that the Proposed Party claims the right of public pathway in the suit property for free access of its Temple Car, meaning thereby that it is interested to support the notice dated 10.06.2010 issued by the Defendant to the Plaintiff to remove the encroachment in that public pathway.

In the decision of the Hon'ble Supreme Court of India in ***Hari Ram -vs- Jyoti Prasad*** [(2011) 2 SCC 682] cited on behalf of the Proposed Party and followed by the Trial Court, it has been held that any member of a public who is prejudicially affected by the denial of the right of use of public road would be an aggrieved person entitled to be made as party in legal proceedings concerning such right. Viewed from that perspective, it is convincing that the presence of the Proposed Party in the suit would enable the complete and effectual adjudication of the dispute involved in that suit and the Plaintiff cannot be prejudiced in any manner by impleading the Proposed Party as the Second Defendant in the suit. The circumstance that the Proposed Party is not claiming any right of ownership can neither deprive it of the right to usage of public pathway in the suit property if it had existed, nor can it be said that it would amount to introduction of a different cause of action in that suit. Though it is hastened to clarify here that the impleading of the Proposed Party cannot be conclusive of the nature of right claimed by the Proposed Party at this pre-mature stage of the suit, it is certainly incumbent upon the Proposed Party

to establish such right through evidence at the time of trial in the suit and it is equally open to the Plaintiff to disprove the same in accordance with law. The result of the foregoing discussion is that the impugned order does not call for any interference.

7. The Trial Court has sent a report dated 11.03.2021 informing that the sole Plaintiff died on 12.07.2019 and his legal representatives have filed an application to bring them on record in the suit, which is pending. The said legal representatives of the deceased Plaintiff have already been substituted as the Petitioners in this Civil Revision Petition by order dated 10.02.2020 in C.M.P. No. 24115 of 2019. Since the impugned order of the Trial Court is confirmed, the legal representatives of the deceased Plaintiff, after they are brought on record, shall take necessary steps for carrying out the amendments in the plaint in the suit and the Proposed Party, who is impleaded as the Second Defendant, shall file Written Statement before the Trial Court within 30 days from the date of receipt of the amended copy of the plaint in the suit. After framing necessary issues, it shall be ensured by the Trial Court that there is atleast one effective hearing every week showing progress of the case. The Trial Court shall expeditiously dispose of the case on merits in accordance with law and file a report of compliance in that regard before the Registrar (Judicial) of this Court.

In fine, the Civil Revision Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

31.03.2021

vjt

Index: Yes/No

**Note: Issue order copy by 01.04.2021.**

To

1. The Executive Officer,  
Mallasamudram Town Panchayat,  
Mallasamudram Town & Post,  
Tiruchengode Taluk,  
Namakkal District.
2. The Additional District Munsif Court,  
Tiruchengode.

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**P.D. AUDIKESAVALU, J.**

**vjt**



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