

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.04.2021	Pronounced on: 28.04.2021
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CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.1741 of 2016
and
C.M.P.No.9245 of 2016

Sri Vankayal Kuppaiah Chetty Vysya
Dharama Sathram – Rep by its Secretary
G. Murali Mohan ... Petitioner/First respondent/Respondent

Vs.

1. D. Lakshmi Narayanan ... Respondent/Petitioner/Appellant
2. M/s P.M.S . Traders rep by its partner
Mr.P.M. Govindaraj
3.M/s Mohan Enterprises
rep by its Mohanlal ... Respondents 2 and 3/
Proposed Respondents 2 and 3

Prayer: This Civil Revision Petition is filed under Article 227 of the constitution of India to set aside the order dated 29/01/2016 made in C.M.P.No.1033 of 2015 in A.S.No.264 of 2014 passed by the IV Additional City Civil Judge, Chennai and thereby dismiss the petition.

For Petitioner : Mr. S. R. Rajagopal

For Respondents : Mr. T.R. Sathiyamohan

ORDER

(Heard through video conferencing)

The arguments of the learned counsel for the petitioner and the learned counsel for the second and third respondents heard elaborately. There is no representation for the first respondent.

2. The Civil Revision petitioner is the defendant in the suit. The first respondent /petitioner/plaintiff has filed a petition in C.M.P.No.1033 of 2015 for impleading the proposed respondents 2 and 3, as defendants 2 and 3 in the suit for the reason that they entered as tenants in the suit property under the first respondent/defendant during the pendency of the suit.

3. The original suit was filed against this Revision Petitioner/ defendant in O.S.No.39 of 2011 was dismissed on 16.04.2014. Aggrieved over that the plaintiff has filed the first appeal in A.S.No.264 of 2014. Only during the pendency of the appeal proceedings, the plaintiff has filed the petition to implead the proposed respondents 2 and 3 as parties to the appeal on the footing that the appeal is continuation of the suit. The first appellate Judge accepted the contention of the first respondent/plaintiff and allowed the petition by recording

a finding that the proposed parties are necessary parties for the effective adjudication of the suit.

4. The plaintiff has filed the suit for the relief of recovery of possession and permanent injunction against this Revision Petitioner/ defendant. It is alleged that during the pendency of the first appeal proceedings the Petitioner/defendant has let out the suit properties for rent to the proposed parties/ respondents 2 and 3.

5. The learned first appellate Judge has thought it fit to implead the proposed parties 2 and 3/ respondent 2 and 3 as parties to the suit on a finding that the appeal can be effectively adjudicated only in their presence. The first respondent/plaintiff has lost the suit and no order of injunction was granted during the pendency of the first appeal. During the course of arguments the learned counsels for the respondents submitted that the proposed parties/ respondents 2 and 3 are not necessary parties and there is no cause of action against them.

6. It is alleged by the first respondent/plaintiff that if the appeal is allowed, the occupation of the suit property by the proposed defendants 2 and

3/respondents 2 and 3 would cause unnecessary complications while executing the decree. Now the proposed defendants 2 and 3/ Respondents 2 and 3 have become aware of the pending litigation. Despite that the proposed defendants 2 and 3 are not interested in getting themselves impleaded. In case if the appeal is allowed and the execution proceedings are taken, the proposed parties can not file any obstruction petition since they are estopped to do so by their own conduct.

7. So even if the first respondent/plaintiff gets a decree in his favour by winning the appeal, the execution proceedings will not be hampered due to the alleged occupation of the proposed parties 1 and 2/ Respondents 2 and 3 in the suit property. Hence they need not be added as parties to the suit.

In the result, this Civil Revision Petition is allowed. No costs. Consequently the connected civil miscellaneous petition in CMP.No.9245 of 2016 is closed.

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No
smn

28.04.2021

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To

1.The IV Additional City Civil Judge, Chennai

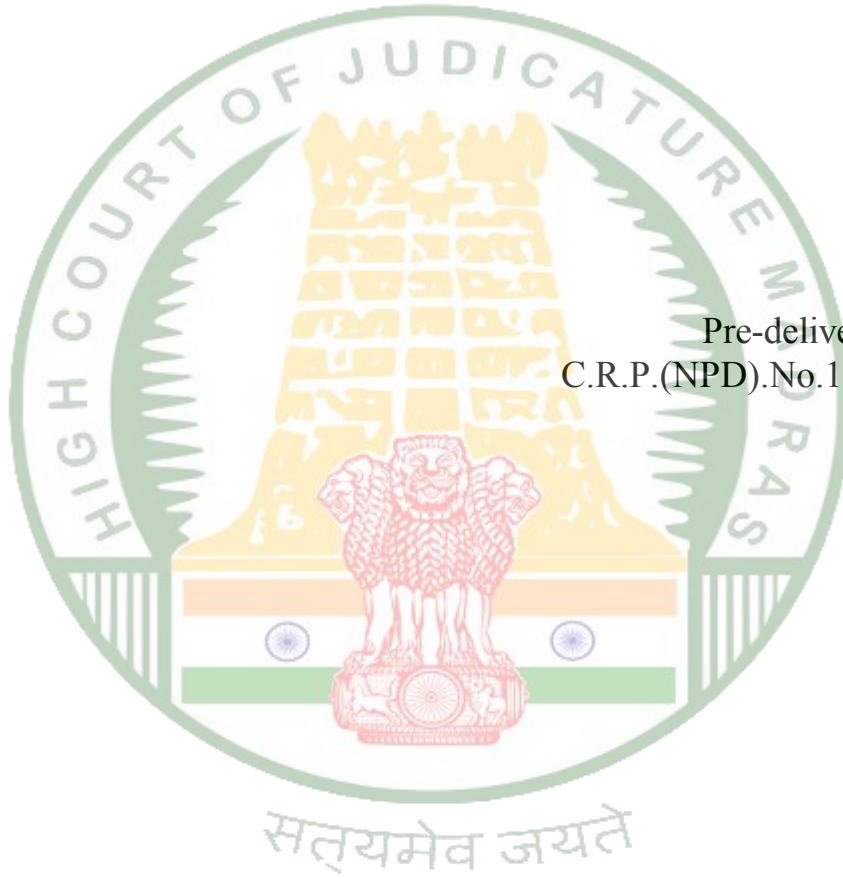
2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

Smn



Pre-delivery Order in
C.R.P.(NPD).No.1741 of 2016

28.04.2021

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