

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).Nos.1892 and 1893 of 2020
and C.M.P.No.11476 of 2020**

P.P.Ravi

...Petitioner
in both C.R.Ps.

Vs

1.Sivaji
2.K.Dhanasekaran
3.D.Thamaraiselvan

...Respondents
in both C.R.Ps.

Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3/2019 and I.A.No.4/2019 in O.S.No.123 of 2019 dated 05.02.2020 on the file of the Principal District Munsif, Tiruppathur.

For Petitioner
in both C.R.Ps.

Mr.V.Manohar

For Respondents
in both C.R.Ps

Mr.Prakash Adiapadam (For R1)
Mr.K.Govi Ganesan (For R2 & R3)

COMMON ORDER

These two Civil Revision Petitions have been filed taking advantage of Article 227 of the Constitution of India questioning the orders in I.A.No.3/2019 in O.S.No.123 /2019 and I.A.No.4/2019 in I.A.No.2/2019 in O.S.No.123/2019. The suit is pending on the file of the learned Principal District Munsif at Tiruppathur. A common order was passed in both the interlocutory applications, namely, I.A.No.3/2019 and I.A.No.4/2019 on 05.02.2020. Both the applications had been filed by a third party to the suit, namely, Mr.Sivaji, seeking to implead himself as party respondent in the pending interlocutory application and as party third defendant in O.S.No.123/2019. As stated, a common order was passed on 05.02.2020 allowing the said applications.

2.Questioning that order, the two Civil Revisions Petitions have been filed by the plaintiff.

3.The plaintiff, Mr.P.P.Ravi, filed the suit in O.S.No.123/2019 against

two defendants, Mr.K.Dhanasekaran and Mr.K.Thamaraiselvan, seeking a judgment and decree of permanent injunction restraining the said defendants from interfering with peaceful possession of the suit schedule property. There are two items in the suit schedule property but it is an accepted fact that primarily, the parties are involved with the running of a petrol bunk, by name, M/s.Raksha Agencies, which is a depot of the Indian Oil Corporation.

4.Heard Mr.V.Manohar, learned counsel for the revision petitioner, Mr.Prakash Adiapadam, learned counsel for the first respondent/petitioner in the two interlocutory applications and Mr.K.Govi Ganesan, learned counsel for the respondents 2 and 3/1st and 2nd defendants in the suit.

5.Mr.V.Manohar, learned counsel for the revision petitioner stated that the suit had been filed only for permanent injunction restraining the defendants in the suit from interfering with the suit property and in the said suit, the third party had filed interlocutory applications seeking to implead himself not only in the suit but also in the pending interlocutory application for injunction. Learned Counsel stated that interim injunction had been

granted by the Trial Court. The learned counsel further pointed out that whatever may be the contentions by the third party with respect to agreements said to have been entered into between the third party and the plaintiff, which agreements the plaintiff denied and as a matter of fact stated that signatures in blank papers had been obtained, the learned counsel also stated that all those agreements are subject matter of evidence and it is for the third party to institute separate proceedings and cannot be impleaded in the suit since the scope of the present suit is quite narrow as the relief of permanent injunction alone had been sought for.

6.On the other hand, the learned counsel for the contesting respondent Mr.Prakash Adiapadam disputed the statements and pointed out a series of documents/agreements which have been entered into between the plaintiff and the said third party and also stated that exercising rights granted under the said documents, the said third party had also filed a writ petition before this Court and had also filed a Civil Suit as against the present plaintiff and also stated that therefore, he has every right to be impleaded as party defendant and that the order under revision should not be interfered with.

7.I had a perusal of the plaint in O.S.No.123/2019, particularly, the documents filed along with the said plaint. The documents included a sale deed executed by the first defendant in favour of the plaintiff on 19.07.2006, another sale deed in favour of the plaintiff dated 20.11.2006, patta in the name of the plaintiff, house tax receipt in the name of the plaintiff, electricity receipt in the name of the plaintiff, the certificate of the Village Administrative Officer, an agreement in July 2007 with Indian Oil Corporation, registration certificates of M/s.Raksha Agencies dated 05.03.2007, letters from Indian Oil Corporation dated 08.01.2007 and 27.07.2011 and GST registration certificate. The plaintiff has quite strangely not disclosed any of the dealings with the third party Mr.Sivaji with whom quite interestingly he had entered into a partnership deed on 26.09.2016, had entered into a memorandum of understanding again on 26.09.2016, had also executed a registered Power of Attorney on 05.10.2016 and had also given an authorization letter. The plaintiff was also a respondent in W.P.No.26638 of 2018 filed by the said Mr.Sivaji and was also a defendant in O.S.No.237 of 2018 pending in the Court of the Principal District Munsif at Tiruppathur. The reasons for suppression have

to be explained only by the plaintiff and I am confident that the explanations would be advanced and equally confident that they would be put to test during cross examination.

8.Be that as it may, there should have been disclosure of the interests of the said Mr.Sivaji over the petrol bunk and non-disclosure, only swings the pendulum in favour of the said Mr.Sivaji being added as party defendant. Order I Rule 5 of Code of Civil Procedure states that the defendant need not be interested in all the reliefs claimed. Under Order I Rule 3 of CPC a cause of action should survive against the said defendant. The plaintiff may have a direct cause of action for protection of the possession as against the defendants 1 and 2 but the plaintiff should have disclosed the dealings which he had with the said Sivaji. He should atleast have disclosed about the pendency of the writ petition before this Court and he should have disclosed about the pendency of the suit in the Principal District Munsif Court at Tiruppathur in which Court itself, he has filed O.S.No.123/2019. Suppression stares squarely on the face of the petitioner/plaintiff herein.

9.The learned Judge in the course of the order which is now under question in the present revision petitions had also pointed out all these facts. He had also pointed out that though the Power of Attorney had been cancelled the veracity and contents of the documents can be decided in the course of Trial. But the fact that the signatures of the plaintiff have been appended in various documents should have been informed in the Court. Even if it is a case of blank papers having been taken away and signatures being appended, that fact atleast should have been stated in the plaint. It cannot be stated as a counter to a petition filed by the said Sivaji.

10.I hold that the said third party is a necessary party to the suit proceedings. Naturally any order passed with respect to possession of the said Petrol Bunk, will necessarily have to be passed only in the presence of all the parties interested in the said Petrol Bunk and it cannot be denied or disputed that the said Sivaji also has an existing right over the Petrol Bunk. The very fact that he has filed a writ petition and also a suit seeking to enforce his rights only goes to show that the plaintiff has, hopefully not,

deliberately, not included him as defendant in the suit.

11.I find no reasons to interfere with the orders passed. All other aspects raised with respect to the documents are subject matter of trial.

12.Accordingly, the Civil Revision Petitions are dismissed. The orders in I.A.No.3/2019 and I.A.No.4/2019 are upheld and I hold that the said Sivaji should be made as a party defendant in the suit. No order as to costs. Consequently, connected miscellaneous petition is closed.

15.04.2021

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Index:Yes/No

Internet: Yes/No

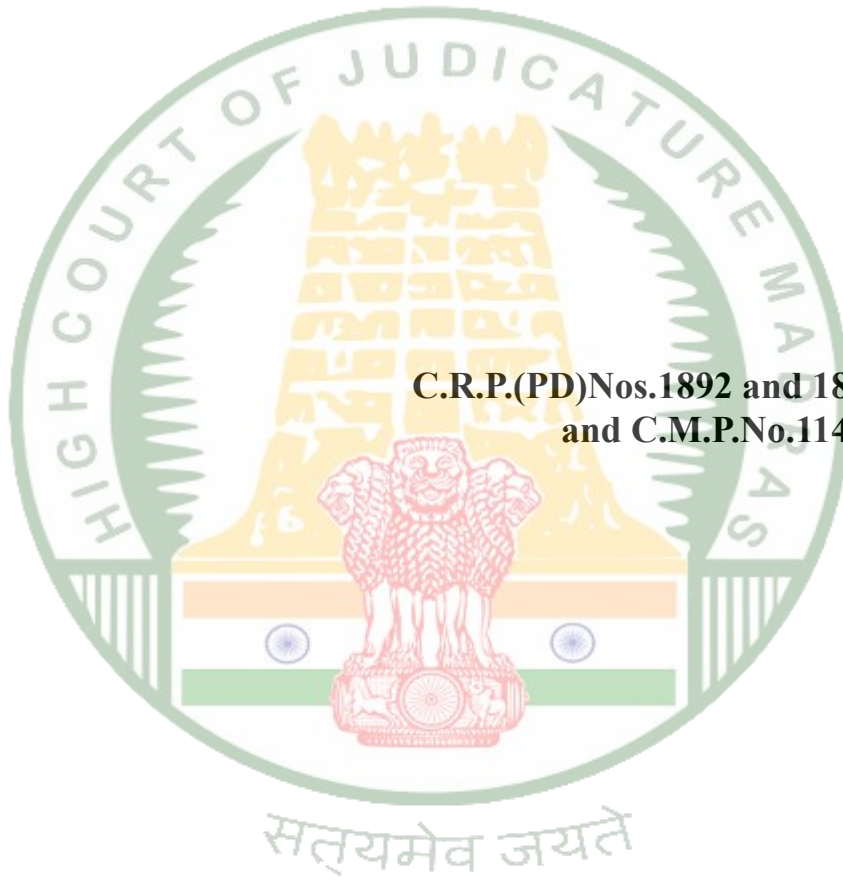
To

The Principal District Munsif,
Tiruppathur.

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C.V.KARTHIKEYAN, J,

cse



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