

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

**C.R.P.(PD) No.707 of 2018
and CMP No.4995 of 2021**

M.P.Aravinda ... Petitioner

Vs

1.P.Karl Marx

2.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai – 600 003.

3.The Executive Engineer,
Corporation of Chennai,
Zone-IX, Lake Areas,
Nungambakkam,
Chennai – 600 034.

Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 21.11.2016 made in I.A.No.17244 of 2015 in O.S.No.12741 of 2009 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner	: Mr.P.Dhananjayan
For R1	: Mr.P.Karl Marx (Party in person)
For R2& R3	: Mr.Gaurav for Mr.R.Gopinath, Standing Counsel for Corporation

ORDER

This Civil Revision Petition is directed against the fair and decreetal order dated 21.11.2016 made in I.A.No.17244 of 2015 in O.S.No.12741 of 2009 on the file of the I Assistant Judge, City Civil Court, Chennai, thereby allowing the petition to implead the first respondent herein.

2. The petitioner is the plaintiff and the respondents 2 and 3 are the defendants. The petitioner filed a suit for declaration declaring that the demolition notice dated 17.11.2009 issued by the third respondent herein to remove the first and second floor of the building premises bearing Old No.8, New No.15, Gulam Abbas Alikhan 9th Street, Thousand Lights, Chennai - 600 006 as null and void. Pending suit, the first respondent, who is none other than her own younger brother, filed a petition to implead himself as a party to the suit filed by the petitioner in I.A.No.3839 of 2010. The same was dismissed by the Trial Court by the fair and decreetal order dated 14.09.2009, for the reasons that to decide the issue framed in the suit, the

first respondent is neither necessary nor proper party. Aggrieved by the same, the first respondent filed a Civil Revision Petition in CRP No.343 of 2011 and the same was also dismissed by this Court by an order dated 17.06.2010. While dismissing the petition, this Court observed as follows :

“8. But, in my considered opinion, the present suit is filed only to declare the demolition notice issued by the 3rd respondent Corporation of Chennai as against the 1st respondent/plaintiff as null and void. To find out whether the revision petitioner is a necessary and property party, the only test that has to be applied is, whether, in the absence of revision petitioner being a party, the issue involved in the suit could be adjudicated or not. In my opinion, the subject matter of the present suit could be adjudicated between the 1st respondent and respondents 2 and 3 themselves without the petitioner being impleaded as a party since no relief as against the revision petition is involved in this matter. Hence, I do not find any valid reason to interfere with the impugned orders”.

3. Again the first respondent filed a petition to implead him as a party on the ground that the demolition notice which is under challenge in

the suit covers 380 sq.ft the land including the stair case, whereby the first respondent is having access to the first, second and third floor of the said 380 sq.ft with access to the stair case. It is also the stair case for his elder brother to reach his first and second floor. When the third respondent issued demolition notice to demolish the property it would also effects the first respondent's right over the common stair case. Further stated that the order passed by this Court in W.P.No.26699 of 2012 has confirmed his locus to agitate the issue in respect of 380 sq.ft including the stair case area situated at Old No.8, New No.15, Gulam Abbas Alikhan 9th Street, Thousand Lights, Chennai.

4. The Court below allowed the petition to implead himself as one of the defendant in the suit on the ground that the preliminary issue regarding “maintainability of suit” is already framed and to avoid future litigation and to solve all the issues and allowed the implead petition. It would also reduce the multiplicity of litigation.

5. On a perusal of the plaint reveals that the petitioner challenged the demolition notice issued by the third respondent herein. The demolition notice was issued only in respect of the construction of the first and second

floor in the suit property are unauthorised one and the said construction was carried without planning permission required under Section 49 of Town and Country Planning Act, 1971. Therefore, the petitioner was called upon to restore the building to its original condition as existed on 27.07.2007, within a period of 30 days. If the petitioner failed to restore its original condition, action will be taken under Section 56 of the Town and Country Planning Act, 1971. Therefore, the demolition notice was issued only in respect of first and second floor of the building and there is absolutely no notice in respect of the stair case whether it is common or exclusively owned by the petitioner or the proposed party viz., the first respondent herein.

6. The contention of the first respondent is that the stair case as well as the entire property not at all belong to the petitioner herein. The alleged sale deed under which the petitioner claimed title over the suit property dated 28.01.2003 is under challenge by the elder brother. Further contended that the demolition notice issued by the civic authority cannot be challenged before the Civil Court and as such the suit itself is not maintainable. Whether the suit is maintainable or not is not a question and

it cannot be questioned by the first respondent, since he has no locus to implead himself as a party to the suit. Though, the first respondent is the own brother of the petitioner herein and his brother filed a suit for declaration in respect of the suit property and he is also one of the party to the said suit, absolutely he has no role to play in the suit filed by the petitioner herein, since the petitioner challenged the demolition notice issued by the second respondent.

7. The learned counsel for the first respondent submitted that though he is a own brother of the petitioner herein, he has no right to challenge an unauthorised construction put up by the petitioner herein. He also submitted that the reason to implead as a party in the suit only to support the case of the Corporation who issued notice for demolition of the unauthorised construction put up by the petitioner. Though, the first respondent is not a proper and necessary party to the suit filed by the petitioner, he can very well support the case of the corporation/third respondent herein.

8. The demolition notice is also very clear that the notice issued only in respect of first and second floor and no where mentioned about the

common path way or stair case situated adjacent to the building. It is also seen that the first respondent as well as his brother filed the suits as against the petitioner and are pending and those suits are no way connected to the present suit. As such the first respondent is not a proper or necessary party to the suit filed by the petitioner herein.

9. That apart, the first respondent already filed a petition to implead himself as a party to the suit and the same was dismissed by the Trial Court. Thereafter, there is no circumstances which warrants the first respondent to file another petition to implead as a party to himself. Without considering those aspects, the Court below mechanically allowed the petition to implead for the reason to reduce the multiplicity of litigation. As such the order passed by the trial Court is perverse and illegal.

10. Accordingly, the order dated 21.11.2016 made in I.A.No.17244 of 2015 in O.S.No.12741 of 2009 on the file of the I Assistant Judge, City Civil Court, Chennai is hereby set aside and the Civil Revision Petition stands allowed. The suit is of the year 2009. Therefore, the Trial

Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

15.04.2021

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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

To

1.The District Munsif Court,
Mannargudi

2.The Sub Registrar
Sub Registrar's Office,
Mannargudi.

3.The District Collector,
District Collector's Office,
Tiruvarur.

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G.K.ILANTHIRAIYAN.J,

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