



C.R.P.(PD)Nos.4464 and 4465 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4464 and 4465 of 2014
and M.P.Nos.1 and 1 of 2014

N.Muthurajan

.. Petitioner
in both CRPs.

Vs.

1.S.K.Mohammed Hussain (died)

K.R.E.Pattulinga Nataraj (died)

2.K.R.E.Arumugham

K.R.E.Sachidhanandam (died)

3.V.Subramaniam (died)

4.Ruckmani

5.Ruba Reka

6.Ramesh

7.Sujatha

8.Sakunthala

9.Sarojini

10.Loganayagi

11.Saraswathi

1/26



C.R.P.(PD)Nos.4464 and 4465 of 2014

12.Ashok

13.Arunkumar

14.Thiyagarajan

15.Real Bakery

D.No.400, P.N.Road

Tiruppur

Represented by Partner Baba

16.Sivagami

17.Nandhini

18.S.Parthiban

(RR16 to 18 brought on record as legal heirs of the deceased R3 viz., V.Subramaniam vide Court order dated 01.11.2021 made in C.M.P.Nos.17077 and 17092 of 2021 in CRP.Nos.4464 and 4465 of 2014)

19.M.Fathima Bibi

20.S.Zareena Begum

21.A.Faritha Begum

22.M.Mohamed Rafi

23.M.Riyajuthin

24.M.Kadhar Batcha

25.M.Mohammed Illiyas

(RR19 to 25 brought on record as legal heirs of the deceased R1 viz., S.K.Mohammed Hussain vide Court order dated 01.11.2021 made in C.M.P.Nos.17106 and 17088 of 2021 in C.R.P.Nos.4464 and 4465 of 2014)

.. Respondents
in both CRPs.



C.R.P.(PD)Nos.4464 and 4465 of 2014

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.08.2014 made in I.A.Nos.298 and 308 of 2012 in O.S.Nos.115 and 116 of 2012 on the file of the Principal District Court, Tiruppur.

In C.R.P.No.4464 of 2014

For Petitioner : Mr.C.R.Prasanan

RR 1 and 3 : Died

R4 : Died

For RR2, 5 to 7
and 16 to 25 : Mr.Vignesh Venkat

For RR12 and 13 : No appearance

For RR8 to 11,
14 and 15 : Not ready in notice

In C.R.P.No.4465 of 2014

For Petitioner : Mr.C.R.Prasanan

RR 1 and 3 : Died

R4 : Died

For RR2, 5 to 7
and 16 to 25 : Mr.Vignesh Venkat

For RR12 and 13 : No appearance



C.R.P.(PD)Nos.4464 and 4465 of 2014

For RR8 to 11,
14 and 15 : Not ready in notice

COMMON ORDER

Civil Revision Petitions are filed against the fair and decretal order dated 27.08.2014 made in I.A.Nos.298 and 308 of 2012 in O.S.Nos.115 and 116 of 2012 on the file of the Principal District Court, Tiruppur.

2. The petitioner is the 1st defendant in O.S.No.115 of 2012 and plaintiff in O.S.No.116 of 2012 and 1st respondent is the plaintiff in O.S.No.115 of 2012 and 1st defendant in O.S.No.116 of 2012 on the file of the Principal District Court, Tiruppur. One K.R.E.Pattulinga Nataraj is the 2nd defendant, 2nd respondent is the 3rd defendant, one K.R.E.Sachidhanandam, is the 4th defendant in both the suits. Pending suits, K.R.E.Sachidhanandam died and K.R.E.Pattulinga Nataraj/2nd defendant and 2nd respondent herein/3rd defendant are his legal heirs. On the death of 2nd defendant K.R.E.Pattulinga Nataraj, his legal heirs, the



C.R.P.(PD)Nos.4464 and 4465 of 2014

respondents 3 to 7 herein were impleaded as defendants 5 to 9 in the suits.

3.Pending Civil Revision Petitions, the 1st respondent died, his legal heirs were impleaded as respondents 19 to 25 and the 3rd respondent died, his legal heirs were impleaded as respondents 16 to 18 in both the CRPs.

4.The 1st respondent filed O.S.No.428 of 2005 on the file of the District Court, Coimbatore and on transfer, it has been re-numbered as O.S.No.115 of 2012 on the file of the Principal District Court, Tiruppur. The 1st respondent filed the said suit for partition and in the plaint, he has stated that he possessed title of the suit property and made averments as to how he is entitled to have share in the suit property. The petitioner filed written statement on 10.08.2009. The petitioner and other defendants are contesting the suit. The 1st respondent filed reply statement in November, 2009.



C.R.P.(PD)Nos.4464 and 4465 of 2014

WEB COPY

5.The petitioner filed O.S.No.482 of 2011 on the file of the Fast Track Court No.II, Coimbatore and on transfer, it has been re-numbered as O.S.No.116 of 2012 on the file of the Principal District Court, Tiruppur. The petitioner filed the said suit for declaration of his pre-emptive rights in the suit property. According to the petitioner, as per arrangement reached in Panchayat on 12.01.2000, he is entitled to relief of pre-emptive right in respect of the suit property. The 2nd defendant therein filed written statement on 10.02.2010, other defendants filed written statement and are contesting the suit.

6.As per the order of this Court dated 30.10.2013 made in Tr.C.M.P.No.49 of 2013, a joint trial was ordered to try both the suits in O.S.Nos.115 and 116 of 2012 together. While the suits were posted for trial, the petitioner filed I.A.No.298 of 2012 in O.S.No.115 of 2012 and I.A.No.308 of 2012 in O.S.No.116 of 2012 under Order I Rule 10(2) of C.P.C. to implead the proposed parties 10 to 17, who are respondents 8 to 15 herein, as defendants 10 to 17 in both the suits.



C.R.P.(PD)Nos.4464 and 4465 of 2014

WEB COPY

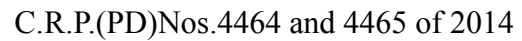
7. According to the petitioner, father of the 1st respondent i.e., Kader Basha Sahib leased out a portion of the suit property to one K.N.Ramasamy on 03.05.1959. The tenant Ramasamy died leaving his widow Ramathal. Ramathal purported to deny title of the landlord. R.C.O.P. proceedings have been initiated before the learned Rent Controller, Tiruppur, in R.C.O.P.No.2 of 2000 and the same is pending. The said Ramasamy and Ramathal died intestate leaving their two sons Moorthy and Sivasubramaniam and three daughters viz., Sakunthala, Sarojini and Loganayaki, who are the respondents 8 to 10 herein as their legal heirs. His son Moorthy died as a bachelor. Another son Sivasubramaniam died intestate leaving his widow Saraswathi, 11th respondent herein and his two sons, respondents 12 and 13 herein. Apart from that, Ramasamy and Ramathal had inducted the respondents 14 and 15 herein as sub-tenants in the portion of the suit property leased out to Ramasamy. The legal heirs of Ramasamy and Ramathal also denied title of the suit property. The sub-tenants are in possession of the suit property, hence, they are necessary and proper parties to the suit. All the



C.R.P.(PD)Nos.4464 and 4465 of 2014

proposed parties are claiming right, interest and also possession. Unless they are impleaded as party defendants in the suit, the petitioner will be put to loss and even if any decree is passed in their absence, the decree will not bind on them and it will result further legal proceedings and prayed for impleading respondents 8 to 15 herein as defendants 10 to 17 in both the suits.

8.The 1st respondent and 6th respondent filed separate counter affidavits, the respondents 3 to 5 and 7 adopted the counter affidavits filed by the 6th respondent and resisted the applications filed by the petitioner on the ground that applications filed to implead the respondents 8 to 15 herein as party defendants are only to drag on the proceedings. This Court in Tr.C.M.P.No.49 of 2013 by order dated 30.10.2013, directed the trial Court to dispose of the suits within a period of three months. When the suits were ripe for trial, the petitioner has come out with present applications only to drag on the proceedings. The proposed parties are tenants and the Rent Control proceedings initiated



9. The learned Judge considering the averments in the affidavits, the affidavits and the nature of relief sought for, dismissed both the applications holding that respondents 8 to 15 are not necessary and proper parties to the suits and they need not be impleaded as defendants in the suits.

10. Against the said fair and decretal orders dated 27.08.2014 made in I.A.Nos.298 and 308 of 2012 in O.S.Nos.115 and 116 of 2012, the petitioner has come out with the present Civil Revision Petitions.

11.The learned counsel appearing for the petitioner contended that the learned Judge failed to consider that respondents 8 to 13 are legal heirs of tenant Ramasamy and therefore, they are necessary parties to the



C.R.P.(PD)Nos.4464 and 4465 of 2014

suits. The Rent Control proceedings initiated by the 1st respondent in R.C.O.P.No.2 of 2000 is pending. The learned Judge failed to consider that the respondents 14 and 15, the sub-tenants are in possession of a portion of the suit property and hence they are also necessary parties to the suits. If any order is passed in their absence, they will claim that said decree is not binding on them. In support of his contentions, he relied on the following two judgments:

(i) (1996) 6 SCC 373 (Sk.Sattar Sk.Mohd. Choudhari vs. Gundappa Amabadas Bukate);

“37. In view of the above discussion, it is obvious that the law with regard to the splitting of tenancy is not what the High Court has set out in the impugned judgment. As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property



C.R.P.(PD)Nos.4464 and 4465 of 2014

by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction



WEB COPY



C.R.P.(PD)Nos.4464 and 4465 of 2014

to overcome the rigours of Rent Control laws which protected eviction of the tenants except on specified grounds set out in the relevant statute.

.. ..

.. ..

40. We have already indicated above that during the pendency of the appeal in this Court the respondent has purchased the remaining portion of the shop, which had fallen in the share of the appellant's brother. This portion measures 23' x 7-1/2'. It has been purchased from Smt. Zubedabi, wife of the appellant's brother, in whose share the said portion had fallen on partition, and who had gifted that portion to his wife. The copy of the sale deed has been filed in this Court, to which no objection has been taken by the counsel for the respondent. The respondent does not deny the transaction. He having purchased the remaining portion of the shop, became the owner thereof and his interest as a tenant merged in his right as an owner of that portion. He, therefore, remained a tenant only in respect of the disputed portion and consequently the suit filed by the appellant in respect of that portion was clearly maintainable."



C.R.P.(PD)Nos.4464 and 4465 of 2014

(ii) (2006) 1 SCC 125 (Messrs. Karta Ram Rameshwar Dass vs.

Ram Bilas and others);

“7.In view of the foregoing discussion, we hold that in a suit for partition filed by one co-sharer against another if a tenant is made party, he can object to the claim for partition if it is shown that the same was not bona fide and made with an oblique motive to overcome the rigors of rent control laws which protected the eviction of the tenant except on the grounds set out in the relevant statute. After a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective shares by filing separate proceedings for eviction under rent control laws on the grounds enumerated thereunder. In the present case, the tenant failed to prove that the claim for partition was not bona fide. Therefore, final decree in the suit for partition has been rightly confirmed by the High Court but it was not justified in reversing the decree of the trial court, which directed that the possession of the tenant could not be disturbed unless and until proceeding is initiated for its



C.R.P.(PD)Nos.4464 and 4465 of 2014

eviction under the Act, and in ordering for recovery of possession from the tenant of that portion of the tenanted premises which had fallen to the share of the plaintiff. In our view, the trial court was quite justified in directing that possession of the tenant would not be disturbed and it can be evicted only in accordance with law by taking steps for eviction under the provisions of rent control legislation upon the grounds enumerated thereunder.”

12.The learned counsel appearing for the respondents 2, 5 to 7 and 16 to 25 reiterated the averments made in the counter affidavits filed in the applications and made submissions in support of the order of the learned Judge. The learned counsel further submitted that admittedly proposed parties are legal heirs of tenants and sub-tenants. In the suits for partition and for claiming declaration of pre-emptive right, the tenants and sub-tenants are not necessary and proper parties. The learned Judge has properly appreciated scope of Order I Rule 10 of C.P.C. and by giving valid reason, dismissed both the applications in the suits. The facts in the judgments relied on by the learned counsel appearing for the



C.R.P.(PD)Nos.4464 and 4465 of 2014

petitioner are not relevant to the facts of the present case. The issue in the said case is a dispute between the landlord and tenant. Here, the reliefs claimed in the suits are only between owner of the properties. Therefore, the judgments relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner and prayed for dismissal of both the Civil Revision Petitions. In support of his contentions, he relied on the following judgments:

(i) C.M.P.No.709 of 2016, order dated 12.07.2017 (Akshaya Kumar Mishra vs. Ashok Kumar Mishra and others);

“9. In Razia Begum vs. Sahebzadi Anwar Begum and others, AIR 1958 SC 886, the apex Court held that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it raises questions relating to movable or immovable property.

.. ..

11.The intervenor has no direct interest over the suit schedule land. He is neither necessary nor proper party in a suit for partition.”



C.R.P.(PD)Nos.4464 and 4465 of 2014

(ii) **CRP(PD)No.1734 of 2011, order dated 04.07.2017**

WEB COPY

(Kamalesan and others vs. R.Pushpagaran and others);

“12.When the suit was filed against the defendants and the suit has not been filed against the proposed parties, who are the tenants and no relief sought for by the plaintiffs against the proposed parties. Then, the Court would apply his mind and gone into that to reject the petition, but in the present case, how the learned Judge has come to conclusion that when there is no relief sought for against the proposed parties, admittedly, who are the tenants of the suit schedule of property has ordered to implead them as parties/defendants.

.. ..

14.The Court have considered the provision of Order 1 Rule 10(2) of CPC were very wide and the power of Courts were equally extensive. Even, without an application, impleaded as party, the Court can add any other party if such party is necessary party to enable Court to effectually and completely adjudicate questions involved in the suit. Necessary party is one without whom no order can be effectively made and



C.R.P.(PD)Nos.4464 and 4465 of 2014

proper party is one whose presence is necessary as party and he had relevant evidence to give on some questions involved and he becomes necessary witness. But, in the present case, the petitioners/proposed parties and tenants are 3rd parties and they were no way connected in respect of suit schedule of property except the tenant. In the suit schedule of property, they cannot be added as the defendants, since they are not the legal heirs of the original owners of the suit schedule of property and there is no relief also claimed by the petitioners/plaintiffs against the proposed parties. If at all the 3rd defendant wants to income of the rent, they can very well to apply to the Court to file an appropriate application for appointing an Advocate Receiver for collecting the rental amount from the tenant and to deposit the Court or the 3rd defendant himself have right to file an application seeking direction to the tenant, who are in actual possession of the suit schedule of property to deposit the rental amounts. But, without doing so, the 3rd defendant has filed the present application, for impleading the tenant, since no relief is claimed by the plaintiffs against the proposed parties / 3rd parties in the suit for partition.



WEB COPY



C.R.P.(PD)Nos.4464 and 4465 of 2014

.. ..

16.Considering all the above facts and relevant provisions and judgments rendered by this Court and the Honble Apex Court, it is made clear that if we look at the facts of the present case, the proposed parties are not proper and necessary parties, since no relief sought for by the plaintiffs against the proposed defendants in the suit. Apart from this, they are the tenants in the suit schedule of property.

17.Therefore, I am of the considered view that the order of the learned Principal District Judge, Dharmapuri in I.A.No.184 of 2010 cannot be sustained. The proposed parties who had no occasion to participate in the proceedings before the Court of first instance, actually have no role to play in the suit, since the proposed parties are only the tenant and no relief sought for by the petitioners/plaintiffs against the proposed parties and hence this Court it is just and necessary for warranting interference in the order passed in I.A.No.184 of 2010 in O.S.No.39 of 2009, dated 28.02.2011, on the file of the Principal District Court, Dharmapuri and accordingly, the same is liable to be set aside.”



C.R.P.(PD)Nos.4464 and 4465 of 2014

(iii) **CRP(MD)No.1123 of 2020, order dated 03.08.2021**

WEB COPY

(K.N.Allahbux vs. K.N.Dawood Mohideen and others);

“8.Whether a tenant is a necessary party in a partition suit had been put to acid test in Kamalesan vs. R.Pushpakaran reported in 2017 (7) MLJ 781, wherein a learned Single Judge of this Court has categorically held that a tenant is neither a necessary nor a proper party in a partition suit.”

(iv) **C.R.P.(PD)Nos.333 and 334 of 2019, order dated 28.06.2021**

(Muthusamy and three others vs. Avinashiappan and seven others);

“7.With respect to the relief sought in the plaint, namely to declare the particular Will as null and void, the burden is cast on the plaintiffs to establish that the alleged will was actually executed in circumstances which created a strong suspicion in the mind of the Court. That burden cannot be shifted by the plaintiffs. Thereafter, execution has to be proved. The tenants of the property can never be termed either necessary or proper parties to decide that particular relief. The other test to decide whether any application under Order I Rule 10 of CPC., would lie is whether any order passed



C.R.P.(PD)Nos.4464 and 4465 of 2014

in the suit will directly affect the interest the said proposed parties. That test is also not satisfied, since if the Will is either accepted or rejected, the tenants are not going to get affected. They will still remain as tenants.

8.Insofar as the 1st relief is concerned the tenants are neither proper nor necessary parties. The plaintiffs have also sought the relief of partition and separate possession. Once again, the tenants need not be heard on the manner in which the property is to be divided. If at all a preliminary decree and thereafter, a final decree is passed then whoever gets a share of the property where the tenants are in possession will become the landlords to those particular tenants.”

13.Though notice has been served on the respondents 12 and 13 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

14.Heard the learned counsel for the petitioner, who is appearing before this Court physically as well as the learned counsel appearing for



C.R.P.(PD)Nos.4464 and 4465 of 2014

the respondents 2, 5 to 7 and 16 to 25 through Video-conferencing/Hybrid mode and perused the entire materials on record.

15.From the materials on record, it is seen that the learned Judge has framed a point for decision viz., whether there is any reason to direct the respondent to produce the documents mentioned in the petition? The point so framed by the learned Judge is not correct. Even though the learned Judge has framed an incorrect point for consideration, the learned Judge has properly appreciated the materials on record and scope of Order I Rule 10 of C.P.C.

16.From the materials on record, it is seen that 1st respondent filed suit in O.S.No.115 of 2012 for partition against the petitioner as 1st defendant and other defendants 2 to 9 and the petitioner filed suit in O.S.No.116 of 2012 against 1st respondent as 1st defendant and other defendants 2 to 9 for declaration of his pre-emptive right in the suit property. The suits are contested by the petitioner, 1st respondent and



C.R.P.(PD)Nos.4464 and 4465 of 2014

other defendants. When the suits were ripe for trial, the petitioner filed present applications for impleading the respondents 8 to 15 as party defendants 10 to 17 in the suits.

17.From the materials on record, it is seen that father of the 1st respondent viz., Kader Basha Sahib leased out a portion of the suit property to one K.N.Ramasamy. The said Ramasamy died leaving behind his widow Ramathal. According to the petitioner, the said Ramathal purported to deny the title of the petitioner and other defendants. In view of the same, 1st respondent filed R.C.O.P.No.2 of 2000 and the same is pending. The said Ramasamy and Ramathal died leaving the respondents 8 to 13 as their legal heirs. The said Ramasamy and Ramathal inducted respondents 14 and 15 as sub-tenants in a portion of the suit property. As Ramathal denied title with regard to the suit property, the respondents 8 to 15 are also denying the title. In view of denial by respondents 8 to 13 and respondents 14 and 15, who are in possession of the portion of the property as sub-tenants, the respondents 8 to 15 are proper and necessary



C.R.P.(PD)Nos.4464 and 4465 of 2014

parties to the suits. On these grounds, according to the petitioner, the respondents 8 to 15 are necessary and proper parties to the suits and unless they are impleaded as party defendants, any decree passed in the suits will not be binding on them. These contentions are without merits in view of the relief sought for in both the suits. O.S.No.115 of 2012 filed by the 1st respondent is for partition to divide the suit property and to allot his share to him. In view of the relief sought for in the suit by the 1st respondent, the respondents 8 to 13, who are the legal heirs of the tenants and respondents 14 and 15, who are sub-tenants, are not proper and necessary parties to the said suit. When a decree for partition is passed, the person, to whom the portion of the property, in which the respondents 8 to 15 are in possession, is allotted, it is open to the said person to continue R.C.O.P. proceedings pending against respondents 8 to 15 and to take any further proceedings against the respondents 8 to 15.

18.As per Order I Rule 10 of C.P.C., a person whose presence is necessary to decide the issue in the suit can be impleaded either as a



C.R.P.(PD)Nos.4464 and 4465 of 2014

plaintiff or defendant. Similarly, a person impleaded in the suit can be struck off, if he is unnecessary party to decide the issue in the suit. The provision of Order I Rule 10 of C.P.C. is to implead a person whose presence is necessary to decide the issue in the suit. In the suits for partition and claiming pre-emptive right, the necessary parties are owners of properties. The legal heirs of tenant and sub-tenants are not necessary and proper parties to decide the issue whether the petitioner, 1st respondent and other defendants are entitled to relief of partition and petitioner is entitled to declaration of pre-emptive right. The learned Judge has properly appreciated scope of Order I Rule 10 of C.P.C. and the fact that respondents 8 to 15, who are legal heirs of tenants and sub-tenants, are not necessary and proper parties to the suits and rightly dismissed both the applications. In view of the above facts, the judgments relied on by the learned counsel appearing for the petitioner do not advance the case of the petitioner.

19. For the above reasons, both the Civil Revision Petitions stand dismissed. Both the learned counsel appearing for the petitioner as well



C.R.P.(PD)Nos.4464 and 4465 of 2014

WEB COPY

as the respondents submitted that suits are posted for trial and in view of pendency of Civil Revision Petitions, there is no progress in the suits. The learned Judge is directed to dispose of both the suits in O.S.Nos.115 and 116 of 2012 as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.12.2021

Index : Yes/No

Internet: Yes/No

kj

To

The Principal District Judge
Tiruppur.



WEB COPY



C.R.P.(PD)Nos.4464 and 4465 of 2014

V.M.VELUMANI,J.

Kj

C.R.P.(PD)Nos.4464 and 4465 of 2014
and M.P.Nos.1 and 1 of 2014

03.12.2021