



CRP (PD) No.2693 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2693 of 2021
and CMP No.19799 of 2021

Kaliyan

... Petitioner

Vs

1. Paramisivam

2. Thavamani

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal order passed on 31.08.2021 made in IA.No.71 of 2021 in O.S.No.84 of 2019 on the file of the II Additional District Munsif, Kallakurichi.

For Petitioner :Mr.D.Murugan



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ORDER

This revision is against an order, dismissing an application under Order I Rule 10 of C.P.C., filed by the defendant in the suit.

2. The suit in O.S.No.84 of 2019 is for mandatory injunction directing the defendant to restore the Well and common channel, and for an injunction restraining them from interfering with the plaintiff's possession of the suit property.

3. Pending suit, the defendant filed an application in IA No.71 of 2021 seeking to implead one Thavamani / daughter of the plaintiff as the defendant in the suit on the ground that the original plaintiff namely Paramasivam had sold the property to his daughter Thavamani under a Sale Deed dated 10.06.2020 (pending suit).

4. This application was resisted by the original plaintiff and the proposed party, contending that the proposed party is not a necessary party and hence she cannot be impleaded.

5. The trial Court accepted the defence and dismissed the



application.

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6. I have heard Mr.D.Murugan, learned counsel appearing for the petitioner.

7. Mr.D.Murugan, learned counsel appearing for the petitioner would vehemently contend that though the said Thavamani purchased the property pending suit, the 2nd respondent is a proper and necessary party to the suit. According to him, the trial Court must have allowed the application.

8. I am unable to countenance the submission of the learned counsel. It is settled law that the plaintiff being a *dominus litus* can decide as to who should be the defendant in his or her suit. If the plaintiff had sold the property to the third party pending suit and he seeks mandatory or permanent injunction, the defendant can always project the defence and contend that the plaintiff having lost the title to the property, is not entitled to the reliefs. It is settled law that *pendente lite* purchaser cannot be held to be



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a necessary party. I, therefore do not see any reason to interfere with the conclusion of the trial Court that the impleading of proposed party is wholly unnecessary. The Revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2021

vum

Index: Yes/No

Speaking order / Non speaking order

To:

The II Additional District Munsif, Kallakurichi.



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R.SUBRAMANIAN, J.

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