

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (PD).No.3200 of 2018
and CMP.No.18296 of 2018

K.Perumal

... Petitioner

Versus

Sougumar (Died)

1.Devanathane

2.S.Malini

3.S.Umamageswary

4.S.Ranga Pradeep Kumar

5.A.Raju

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.09.2018 made in I.A.No.630 of 2018 in O.S.No.654 of 2006 on the file of the I Additional District Munsif, Pondicherry and allow the above Civil Revision Petition.

For Petitioner : Mr.Ashokapathy for Pass Associates

For R1 : Mr.R.Rajaraman

For R2, R3 & R5 : No appearance

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ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 04.09.2018 made in I.A.No.630 of 2018 in O.S.No.654 of 2006 on the file of the I Additional District Munsif, Pondicherry and allow the above Civil Revision Petition.

2.Originally the O.S.No.386 of 2004 was filed and it was renumbered and transfered as O.S.No.654 of 2006. Originally the above said suit was filed on 08.10.2003 and thereafter it was numbered as O.S.No.386 of 2004 before the Principal Sub Judge, Pondicherry and subsequently it was transfered to the file of I Additional District Munsif, Pondicherry.

3.The revision petitioner herein filed an application to implead the petitioner/3rd party as one of the defendant in the above suit.

4.According to the revision petitioner he had purchased the suit schedule property from the defendant on 22.07.2004, whereas in the present case, the suit was filed in the year 2003 and it was numbered in the year 2004 and he was not aware of the present suit pending before I Additional District Munsif Court, Pondicherry, after knowing about the present pending suit he

filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure to implead him as one of the defendant in the suit. Further he contended that he had filed the application under Order 1 Rule 10(2) of CPC and the court can implead him as one of the defendant, at any stage of the proceedings, if the court finds that impleadment of a particular person is necessary.

5.The petitioner purchased the property on 22.07.2004 and he is in the possession for the last 14 years, and he is having title over the suit property as on date, apart from the revenue records, the sale deed also in his favour. Further he has been paying the Electricity charges and house tax for the said property. Since he is the owner of the property, he has to be impleaded as one of the defendant in the suit. However, the court below simply rejected the application for impleadment. Further, in terms of Order 1 Rule 10(2) of CPC, if any third party's interest is affected, they can be impleaded. In the present case, the petitioner's interest is going to be affected, when the decree is passed, because he is the subsequent purchaser of the suit property and he is in the possession of the suit property. The defendant who had sold the property to the revision petitioner does not have any interest to protect the interest of the revision petitioner herein, hence the petitioner has to be impleaded. All these aspects were not considered by the court below and therefore, he filed the

present Civil Revision Petition and prayed to set aside the order passed by the court below in I.A.No.630 of 2018.

6.On the other hand, Mr.R.Rajarajan, learned counsel appearing for the first respondent strongly opposed for allowing this civil revision petition and submitted that the court below considered all the aspects as argued by the revision petitioner and it is a well reasoned order passed by the court below. He further submitted that the revision petitioner is a practicing lawyer in the court below and he is aware of the pending suit for the last 14 years and the trial has been completed and the matter is posted for arguments. Only with the intention to drag the proceedings of the court, he filed this present Civil Revision Petition. Further if the present application to implead him as one of the defendant in the suit is allowed, yet another decade will take to complete the suit.

7.Further the respondent contended though the petitioner is not aware of the pendency of the suit, but the fact remains without he be as counsel on record he has represented the case many time. This aspect was clearly mentioned in the counter filed, in the above application. No reply was filed. The counsel further referred the Judgment with regard to the conduct of the

party and not approaching the court within reasonable time to implead himself as a party to the proceedings. Further, he submitted that the revision petitioner is a *lis pendens* purchaser, and his interest will be protected by his vendor who is the defendant in the suit.

8. On the other hand, the learned counsel appearing for the revision petitioner submitted that no doubt that any decree passed against the vendor will bind the *lis pendens* purchaser. The revision petitioner is the *lis pendens* purchaser. In the event if the suit is conducted by the person, who happened to be the owner of the property, in proper manner, in such case, the revision petitioner's interest would be affected prejudicially. Further the counsel submitted that the petitioner is a practising lawyer in the criminal court and he is not aware of the pending suit. It is true in the counter the respondent stated that the petitioner has been appearing in this matter in the present suit before the court below, without being a counsel on record, but the said statement in the counter statement has not been proved by way of oral and documentary evidences or otherwise in the manner known to law. For the interest of justice the civil revision petition may be allowed and permit the petitioner to implead as one of the party in the suit.

9. Heard the learned counsel for the petitioner and the respondents.

10.Perused the materials available on record. The plaintiffs originally filed a suit on 27.10.2003 and thereafter it was numbered as O.S.No.386 of 2004 on the file of the Principal Sub Judge, Pondicherry and subsequently it was transfered and renumbered as O.S.No.654 of 2006 on the file of the I Additional District Munsif, Pondicherry. The revision petitioner herein purchased the suit property on 22.07.2004. Therefore, his submission was that he is not aware of the suit and if he is not impleaded in this case, if the defendant is not conducting the suit in a proper manner, the interest of the petitioner would be affected prejudicially, hence he has to be impleaded in the suit. No doubt the interest of the revision petitioner needs to be protected in the suit.

11.The present suit is pending for more than 15 years. There is no progress in this matter and therefore impleadment of the revision petitioner is no way going to affect anybody's interest. On the other hand, if the revision petitioner is not impleaded, being a *lis pendens* purchaser, his interest definitely going to be affected, if the vendor of the revision petitioner fails to conduct the case in the proper way.

12. Therefore, this Court is of the view that in the interest of justice, it would be appropriate to implead the revision petitioner. Hence, the order passed by the Court below is liable to be set aside and the same is set aside.

13. In the result, this Civil Revision Petition is allowed. This suit is pending for about 15 years, therefore, this Court directs the Court below to dispose of the suit, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

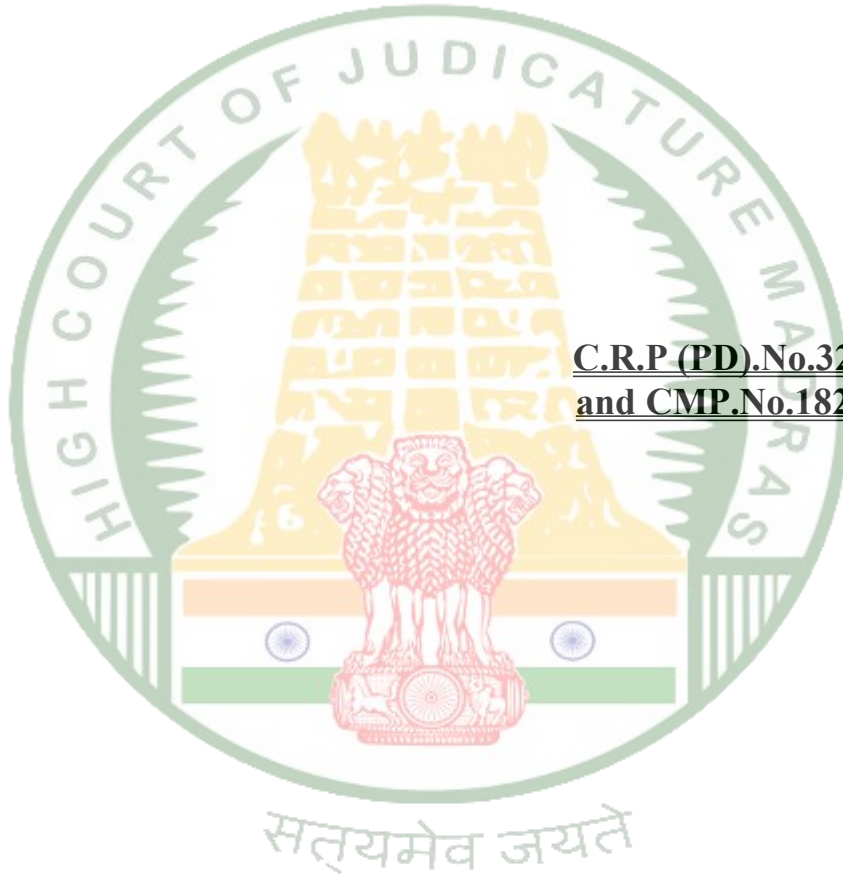
22.03.2021

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To
The I Additional District Munsif, Pondicherry.

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KRISHNAN RAMASAMY, J.,
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