



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.04.2021

Pronounced on : 29.06.2021

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CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P (MD) .Nos.952 to 955 of 2020

and

CMP (MD) No.6181 of 2020

V.Elanjiyam

... Revision Petitioner

Vs.

1.Viswanathan

2.Kamaraj

... Respondents

PRAYER in CRP (MD) . 952 of 2020:-

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the present Civil Revision Petition by setting aside the fair and decreetal order, dated 18.02.2020 made in I.A.No.360 of 2018 in A.S.No.88 of 2018 on the file of the Subordinate Judge, Lalgudi.

Prayer in CRP(MD) . 953 of 2020 :

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the present Civil Revision Petition by setting aside the fair and decreetal order dated 18.02.2020 made in I.A.No.1/2019 in A.S.No.88/2018 on the file of Subordinate Judge, Lalgudi.

Prayer in CRP(MD) . 954 of 2020 :

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the present Civil Revision Petition by setting aside the fair and decreetal order dated 18.02.2020 made in I.A.No.3/2019 in I.A. No. 1/2016 in I.A. No. 360/2018 on the file of Subordinate Judge, Lalgudi.

Prayer in CRP(MD) . 955 of 2020 :

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the present Civil Revision Petition by setting aside the fair and decreetal order dated 18.02.2020 made in I.A.No.4/2019 in A.S.No.88/2018 on the file of Subordinate Judge, Lalgudi.



For petitioner : Ms.J.Maria Roseline
For R2 : Mr.T.Lajapathyroy

ORDER

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These revisions are directed against the orders passed in I.A.No.360/2018, I.A.No.1/2019, I.A.No.3/2019 and I.A.No.4/2019 in A.S.No.88/2018 on the file of the Subordinate Court, Lalgudi.

(i) I.A.No.360 of 2019:

Filed under Order 1 Rule 10(2) CPC for impleadment of the revision petitioner in the appeal suit.

(ii) I.A.No.1 of 2019:

Filed to receive the documents filed along with this petition.

(iii) I.A.No.3 of 2019:

Filed seeking orders to re-open the petition in I.A.No.1/2019 for the purpose of adducing further evidence.

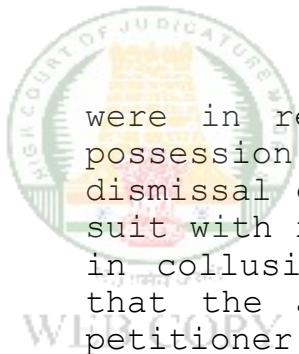
(iv) I.A.No.4 of 2019

Filed to condone the delay in filing the additional documents and to accept the same.

2.The revision petitioner is the third party in the original suit in O.S.No.19 of 2004 and Appeal Suit in A.S.No.88 of 2018. The first respondent/plaintiff has filed the suit in O.S.No.19 of 2004 against the second respondent/defendant, claiming permanent injunction, on the file of the Additional District Munsif Court, Lalgudi, that after trial, the suit was ordered to be dismissed on 26.03.2010 and that the unsuccessful plaintiff, aggrieved by the said dismissal of the suit, preferred an appeal in A.S.No.88 of 2018 and the same is pending on the file of the Subordinate Court, Lalgudi. During the pendency of the above appeal, the revision petitioner, who is the third party in the suit proceedings, has filed the petition in I.A.No.360 of 2018 to implead him as a party in the appeal.

3.It is not in dispute that the second respondent has filed a suit in O.S.No.12 of 2002 on the file of the Additional District Munsif Court, Lalgudi against the revision petitioner for permanent injunction and that the said suit was ordered to be dismissed as not pressed vide judgment, dated 26.03.2010. It is further evident that one Kamatchi has filed a suit in O.S.No.70 of 2002 against the revision petitioner for permanent injunction and that the said suit was ordered to be dismissed for default vide judgment dated 15.10.2008, that the said Kamatchi has filed a petition for restoration of the suit along with the petition for condoning the delay and that the efforts of the said Kamatchi to restore the suit were ended in failure.

4.The case of the revision petitioner is that the earlier two suits filed against him in O.S.No.12 of 2002 and O.S.No.70 of 2002



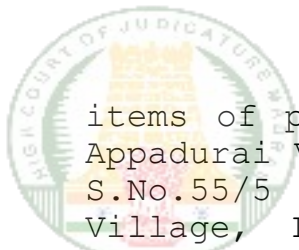
were in respect of the same suit property, that he has been in possession and enjoyment of the suit property that after the dismissal of the said two suits, the first respondent has filed the suit with respect to the same property against the second respondent in collusion and there existed only a shadow fight between them; that the above suit has been filed with a view to defeat the petitioner's claim and right over the suit property that the petitioner is the proper and necessary party to the above appeal and that therefore, in order to protect and safeguard her rights and to reveal the real facts, she has to be impleaded as second respondent in the above appeal.

5.The main contention of the respondents is that the revision petitioner is a total stranger to the suit property, that he has no right, title or interest over the suit property; that the earlier suit in O.S.No.12 of 2002 is with respect to different property and that filing of the above petition is an abuse of process of the Court. It is pertinent to mention that the revision petitioner has claimed that the respondents 1 and 2 are in collusion, whereas the second respondent has claimed that there was collusion between the revision petitioner and the first respondent.

6.The first respondent, in his statement has specifically stated that the revision petitioner was fully aware of the entire proceedings in O.S.No.19 of 2004, on the file of the District Munsif Court, Lalgudi, as he was a neighbor to the parties.

7.The second respondent, has stated in her statement that when the Advocate Commissioner appointed by the trial Court, visited the suit property in the year 2012, the revision petitioner had tried to confuse things and gave trouble at the instigation of the first respondent. The revision petitioner has not specifically denied the above contentions of the respondents 1 and 2. As already pointed out, the original suit in O.S.No.19 of 2004 was filed in the year 2004 and the suits, which were filed against the revision petitioner, were dismissed, one in the year 2008 and another in the year 2010. Considering the above, as rightly observed by the learned Appellate Judge that the petitioner's contention is that he came to know about the suit and appeal proceedings only in the second week of September 2015 through her neighbour cannot be accepted, cannot be found fault with.

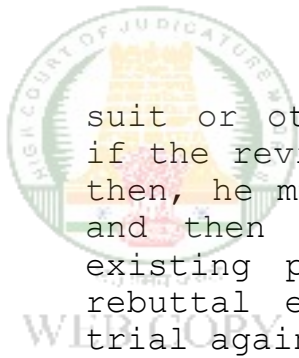
8.Admittedly, the suit in O.S.No.19 of 2004 is not a title suit and is only for permanent injunction restraining the second respondent from interfering with the first respondent's peaceful possession and enjoyment of the suit property. It is not in dispute that the suit in O.S.No.19 of 2004 is in respect of the property situated in S.No.39/7A in Appadurai Village of Lalgudi Taluk. According to the second respondent, the suit in O.S.No.12 of 2002 is with respect to S.No.39/7B of Appadurai Village, Lalgudi Taluk. It is also admitted by the second respondent that in O.S.No.70 of 2002 there are two



items of properties. The first item relates to house property of Appadurai Village and the second item relates to 20 cents of land in S.No.55/5 and an extent of 44 cents land in S.No.39/7 Mela Valadi Village, Lalgudi Taluk, Tiruchirappalli District. As rightly contended by the respondents side, though the revision petitioner has alleged that the suit property in all the three suits are one and the same, he has not produced any materials or evidence to substantiate the same.

9.The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. The term, '*dominus litis*', is a latin word, which means master of the suit. The plaintiff being the master of the suit has to choose the parties against whom, he has any grievance and to implead them as defendants for necessary relief and as such he cannot be compelled to face litigation with the persons against whom he has no grievance. But, at the same time, this general Rule is subject to the Provision of Order 1 Rule 10 (2) of CPC. No doubt, Order 41 Rule 20 of CPC., contemplates that the Appellate Court has power to implead only such persons as parties to the appeal who were parties before the trial Court and were not made parties to the appeal and as such the said provision, has no application for impleading the 3rd parties/strangers to the appeal. It is settled law that Order 41 Rule 20 CPC is not exclusive or exhaustive of the powers of the Appellate Court to add parties and the Appellate Court has jurisdiction to permit the impleading of parties in appeals invoking Order 1 Rule 10 (2) CPC, but, the said power has to be exercised only in exceptional circumstances and the Appellate Court has to ensure that impleadment must be to facilitate the determination of the issue as between the original parties to the suit. In the present case, it is not the case of the revision petitioner that his presence is necessary in order to effectively and completely adjudicate and settle all the questions involved in the suit. It is for the revision petitioner to show that his impleadment is necessary to decide the disputes between the original parties to the suit. As already pointed out, the revision petitioner has been claiming title and possession over the suit property and also alleged that the suit has been filed in collusion with a view to defeat his claim and his rights over the suit property.

10.It is settled position of law that an injunction is a personal remedy and as such, the same does not run with the land. In the case on hand, the judgment already passed in O.S.No.19 of 2004, and the judgment to be pronounced in Appeal suit in A.S.No.88 of 2018, are only for personal reliefs (Judgment in Personam) and can be enforced against the parties to the lis and not against the stranger. As rightly contended by the respondent side, if the revision petitioner really apprehends that his right and interest over his property should be safeguarded, he can very well file a



suit or other proceedings claiming appropriate reliefs. In case, if the revision petitioner is ordered to be impleaded in the appeal, then, he must be given an opportunity to file his written statement and then an opportunity to adduce her evidence and thereafter, existing parties are also to be given an opportunity to adduce rebuttal evidence, if any, which would result in conducting the trial again.

11.Considering the above, the dismissal of the impleading petition by the Court below cannot be found fault with. Since the impleading petition itself was dismissed, the question of receiving the documents filed by the revision petitioner does not arise at all. Hence, this Court is in entire agreement with the dismissal of all the four petitions. Consequently, this Court decides that these revisions are devoid of merits and are liable to be dismissed and are dismissed.

12.In the result, these Civil Revision Petitions are dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsd

To

The Sub Court, Lalgudi.

+1 CC to M/s.T.LAJAPATHI ROY,Advocate (SR-20646[F] dated 30/06/2021)

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and

CMP (MD) No.6181 of 2020

29.06.2021

RC (22.07.2021) 5P-3C