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C.R.P(MD).No.1038 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.08.2021

Pronounced on : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD) .No.1038 of 2020

and

CMP(MD)No.6641 of 2020

P.Paulraj

...Revision Petitioner

Vs.

1.M.Mariappan
2.V.Chandrasekaran
3.V.Jeyabalan
4.V.Sundaramahalingam
5.V.Seenivasaragavan
6.N.Shanmugasundaram
7.S.Sundari
8.S.Manega
9.S.Sathya Priya
10.S.Nithya Poorani
11.S.Saranya Devi
12.N.Rajasekaran
13.A.Jeyakrishnan
14.A.Jeyamoorthi
15.A.Jayaraj
16.A.Velmurugan
17.M.Muthurani
18.C.R.Prema Latha
19.S.Vijayalakshmi
20.R.Jeyaraj

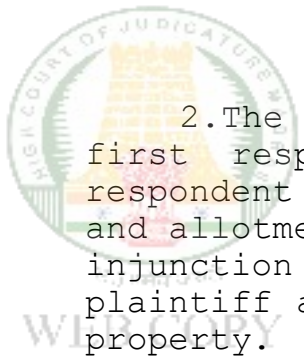
: Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the order, dated 06.01.2020 passed in I.A.No.75 of 2018 in O.S.No.157 of 2017 by the Additional District Judge, Dindigul, set aside the same by allowing this revision.

For petitioner : Mr.A.Hariharan
For R1 : Mr.N.Marivel

ORDER

This revision is directed against the order passed in I.A.No.75 of 2018 in O.S.No.157 of 2017, dated 06.01.2020 on the file of the learned Additional District Munsif Court, Dindigul, in dismissing the petition filed under Order 1, Rule 10 of the Civil Procedure Code.

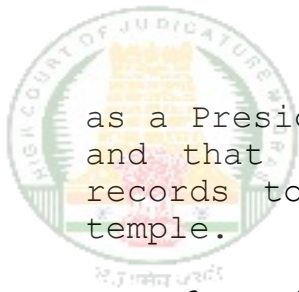


2.The revision petitioner is the third party to the suit. The first respondent / plaintiff has filed the suit against the respondent Nos.2 to 20 / defendant Nos.1 to 19 claiming partition and allotment of 1/8th share in the suit properties and for permanent injunction restraining the 9th defendant from interfering with the plaintiff and others' peaceful possession and enjoyment of the suit property. The first defendant has filed a written statement and the same was adopted by the defendants 3, 5 , 11 to 16 and 18. The 19th defendant claiming to be the lessee of the suit property has filed his written statement. Pending suit, the revision petitioner herein has filed a petition in I.A.No.75 of 2018 under Order 1, Rule 10 (2) of Civil Procedure Code, to implead him as 20th defendant in the above suit. The learned Additional District Judge, after enquiry, has passed the impugned order, dated 06.01.2020 dismissing the said petition. Aggrieved by the said order of the dismissal, the revision petitioner/third party has come forward with the present revision.

3.The case of the revision petitioner/3rd party is that the suit property was purchased by the Dindigul Arisikara Vellalar Community for Sri Agasthiar Vinayakar Temple situated at Muthalagupatti, Pallapatti Village of Dindigul through the Executive President/Manager of the said temple Mahalingampillai on 26.06.1885 vide document No.873/1885, that Patta, Chitta and Adangal stand in the name of the temple, that the above said temple was in the management and administration of the said community for the past 400 years, that the Management Committee had leased out the suit property to 19th defendant R.Jeyaraj vide lease deed, dated 07.12.1984 in Document No.36/84, that the temple committee had previously leased out the property to some other persons vide lease deeds, dated 14.08.1920 and 08.07.1929, that the plaintiff in collusion with the defendants 1 to 18 has filed the above suit suppressing the title of the temple to the suit property, that the 19th defendant has already filed a written statement raising the above contentions and also taken a plea that the suit is bad for non joinder of necessary parties and that since the petitioner is the owner of the suit property, he is to be impleaded as 20th defendant in the suit.

4.The plaintiff has filed a lengthy counter affidavit disputing the averments raised by the proposed party and alleged that the suit property was owned by his ancestor Mahalingampillai, that tomb (Jeevasamadhi) of Mahalingampillai was in the south eastern corner of the suit property, that the plaintiff has not claimed any right over 19 cents of land in which, Sri Agasthiar Vinayakar Temple is situated, that the proposed party cannot be considered as necessary party to the above proceedings and that the above petition is liable to be dismissed.

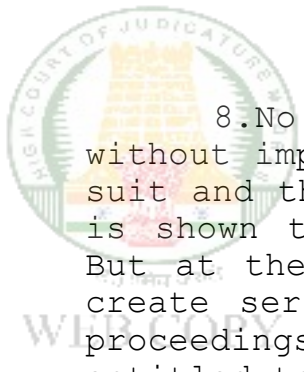
5.The plaintiff has also taken a defence that the proposed
<https://hcservices.ecourts.gov.in/fusebox/> the above petition in his individual capacity, not



as a President or Manager of the said Sri Agasthiar Vinayakar Temple and that the proposed party has not produced any documents and records to show that he is the President / Manager of the said temple.

6.No doubt, as rightly contended by the learned counsel for the first respondent/plaintiff, the proposed party has not produced any iota of evidence to show that he is the President / Manager of Sri Agasthiar Vinayakar Temple owned by Arisikara Vellalar Community. Moreover, it is pertinent to mention that the proposed party has filed the above impleading petition in his individual capacity and not on behalf of the Sri Agasthiar Vinayakar Temple or Arisikara Vellalar Community. But as rightly pointed out by the learned counsel for the revision petitioner, the proposed party, in the affidavit filed in support of the impleading petition, has specifically stated that he has filed the affidavit as President/Manager of Sri Agasthiar Vinayakar Temple owned by Arisikara Vellalar Community. But at the same time, as rightly pointed out by the learned counsel for the respondent, in the short and long cause titles, the particulars of the proposed party sought to be impleaded in the impleading petition, there is no reference to the Sri Agasthiar Vinayakar Temple or Arisikara Vellalar Community.

7.The main contention of the proposed party is that the entire suit property was purchased and is owned by Sri Agasthiar Vinayakar Temple, which is under the management of Arisikara Vellalar Community. As already pointed out, the case of the plaintiff is that the suit property was purchased by his ancestor Mahalingampillai, that the patta to the suit property stands in the name of Mahalingampillai till now and that the suit property is owned by the plaintiffs/defendants 1 to 18 jointly. In the counter statement filed to the impleading petition, the plaintiff has specifically stated that the patta to the 19 cents of land in which, Sri Agasthiar Vinayakar Temple situated, also stands in the name of Mahalingampillai and that since the general public have been worshipping in Sri Agasthiar Vinayakar Temple, the plaintiff has not claimed any relief with respect to that 19 cents of land. It is pertinent to mention that the proposed party has summoned and exhibited a copy of the sale deed, dated 26.06.1885 as Ex.X1 and he has also produced to the copies of the lease deed, dated 14.08.1920, 08.07.1929 and 07.12.1984. The proposed party has also produced Chitta and Fair rent proceedings conducted by the Revenue Court, Madurai. On perusal of the above documents, it is clear that the proposed party has produced *prima facie* evidence to show that the suit property is owned by Sri Agasthiar Vinayakar Temple. Since the plaintiff has claimed the suit property as the separate property of himself and other defendants 1 to 18, as rightly contended by the learned counsel for the revision petitioner, the presence of the proposed party is necessary for deciding/adjudicating the issues now arisen and involved in the suit.



8.No doubt, even if the suit is directed to be proceeded without impleading the temple, any judgment to be pronounced in the suit and the consequent proceedings will not bind the temple, if it is shown that the temple is the real owner of the suit property. But at the same time, if it is left undecided now, the same will create serious complications and will result in multiplication of proceedings. No doubt, the plaintiff being the *dominus litis* is entitled to choose his opponent but that right or entitlement cannot be considered as absolute. In case if the plaintiff is permitted, as a rule, to choose his own opponents and the Court does not interfere on the point, in that event it may be that a collusive decree is obtained against the real owner or interested person without impleading him as a party and when the decree will become final, then at a very late stage, the person vitally affected or the real owner may come to know about it. In that scenario, the same would lead to defeat the interest of justice, which should not be permitted.

9.But the trial Court, by simply observing that since the plaintiff has specifically stated that they are not claiming any relief with respect to the 19 cents referred by the proposed party and that proposed party has not claimed any relief with respect to the property shown in the impleading petition, there was no need for impleading the proposed party, dismissed the petition. But as rightly pointed out by the learned counsel for the revision petitioner, the proposed party, in the impleading petition has not shown 19 cents of land and Sri Agasthiar Vinayakar Temple situated therein alone as the property in dispute.

10.On considering the entire facts and circumstances, this Court is of the view that the decision of the trial Court in dismissing the impleading petition is not good in law and the same is liable to be set-aside. As already pointed out, the petitioner has sought to implead him in his individual capacity. But this Court has already observed that Sri Agasthiar Vinayakar Temple is the necessary party and the same is liable to be impleaded. It is pertinent to mention that Order 1, Rule 10 of Civil Procedure Code empowers the Court to add any person as a party at any stage of proceedings even without the application of either party. It is necessary to refer the judgment of the ***Division Bench of this Court in Devaki Thiyagarajan Vs. Ahamed and others reported in 2015 (4) CTC 293*** and the relevant passage is extracted here under:

'66. His Lordship has also observed that Order 1 Rule 10 of C.P.C. empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary or proper for effective adjudication of the issue involved in the suit. It is manifest that Order 1 Rule 10(2) C.P.C. gives a wider discretion to the court to meet every case or defect of a party



and to proceed with a person who is either a necessary or proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.''

11. Considering the above, this Court is of the view that Sri Agasthiar Vinayakar Temple represented by its President/Manager P.Paulraj is to be impleaded as 20th defendant. In case if it is shown subsequently that the proposed party P.Paulraj is not the President / Manager of the said temple, then he will certainly be liable for civil and criminal consequences.

12. In the result, this Civil Revision Petition is allowed and the impugned order, dated 06.01.2020 passed in I.A.No.75 of 2018 in O.S.No.157 of 2017 by the learned Additional District Judge, Dindigul, is set-aside and the trial Court is directed to implead Sri Agasthiar Vinayakar Temple represented by its President/Manager P.Paulraj as 20th defendant and proceed with the suit in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsd

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Additional District Judge,
Dindigul.

+1 CC to M/s.A.HARIHARAN, Advocate (SR-32407[F] dated 25/10/2021)
+1 CC to M/s.N. MARIAPPAN, Advocate (SR-32932[F] dated 27/10/2021)

order made in
C.R.P (MD) .No.1038 of 2020
and
CMP (MD) No.6641 of 2020
25.10.2021

VR (CO)
GC/PM(12.11.2021) 5P 4C

<https://hcservices.ecourts.gov.in/hcservices/>