



C.R.P.(PD).No.1625 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	26.04.2022
PRONOUNCED ON :	12.07.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD).No.1625 of 2015
and M.P.No.1 of 2015

R.Kabali

... Petitioner/ Petitioner/
Proposed 3rd defendant

Vs.

- 1) N. Raja
- 2) N. Venkatesan
- 3) N. Kasthuri
- 4) The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai 600 003
- 5) The Assistant Commissioner,
12th Division,
Corporation of Chennai,
Chennai 600 016.

... Respondents/ Respondents/
Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order I.A.No.1055 of 2013 dated 05.03.2015 passed in O.S.No.266 of 2013 on the file of the Additional District Munsif Court, Alandur.



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For Petitioner	...	Mr.R.Suresh Kumar For M/s.K.M.Vijayan Associates
For R-1	...	Mr.G.Ramachandran
For RR 2 & 3	...	Mr.S.Senthilnathan
For RR 4 & 5	...	M/s.P.T.Ramadevi

ORDER

The Revision Petitioner is the proposed 3rd defendant in I.A.No.1055 of 2013 in O.S.No.266 of 2013. The said I.A. has been filed praying to implead him as party to the suit in O.S.No.266 of 2013. The learned Additional District Munsif, Alandur, by order dated 05.03.2015, dismissed the said I.A. Against which, the present revision is filed before this Court.

2. The suit in O.S.No.266 of 2013 has been filed for the relief of permanent injunction restraining the defendants and their persons from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The cause of action for the suit is that there should not be any encroachment in the free passage in respect of 12 feet wide passage connecting the property of Duraisami Reddiar Land and Mount Madipakkam Road available to the plaintiffs. The



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proposed defendant (Revision Petitioner herein) is disputing the right and interest of plaintiffs over the suit property.

3. According to the proposed defendant, the plaintiffs are in possession of documents only in respect of house and land suit schedule properties but not in respect of road portion of land. He further claims that he is possessing documents to show that the road portion of land viz., B schedule property is only a road poramboke and hence he is the just and necessary party to the above suit.

4. On the other hand, it was refuted by the plaintiffs that the proposed third party has nothing to do with the plaintiffs property and the private pathway of 12 ft which is for the exclusive usage of three brothers who are the original owners, from whom the plaintiffs derived their title. It is the further submission of the plaintiffs before the trial court that 12 ft pathway is within the private patta and not a public road.

5. The learned Judge, on going through the submissions made by both sides, found that subsequent to the earlier cases already decided by the courts, an



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amicable settlement effected on 30.10.1966 before the Panchayat among the brothers as per which there should not be any encroachment in the 12 ft wide passage. However, the proposed defendant is disputing the right and interest of the plaintiffs over the suit property. The court below held that plaintiff is the dominus litus and the plaintiff has the right to choose his opponent and sue against them who interfere with their rights and the plaintiffs cannot be compelled to wage a war against the person in respect of whom cause of action does not arise.

6. The learned Judge pointed out that in the suit for permanent injunction, the vital issues to be decided is the possession of the plaintiffs and interference by the defendants; however, the contention of the proposed defendant is that plaintiffs does not have any right or claim over the suit property, is beyond the scope of the suit and hence, the proposed defendant is not a necessary party for deciding the issues involved in the suit. On the above findings, the learned Judge, dismissed the I.A.No.1055 of 2013.

7. Heard the learned counsel for the revision petitioner and the respondents and perused the materials available before this Court.



WEB COPY 8. In the decision of the Allahabad High Court in Committee of Management etc. reported in **AIR 1995 All. 7**, in a writ petition, a prayer has been made for an order or direction in the nature of certiorari to quash the plaint and all proceedings in a particular suit. A particular individual had filed an application for Committee of Management and he had not been made a party. It was found that he would be a person affected in case another person was allowed to act as Manager. The lower Court overlooked this glaring feature of the case and this was sought to be rectified by the High Court and it was held that,

“the theory of dominus litus should not be over stretched in the matter of impleading of parties, as it was the duty of the court of ensure that is for deciding the real matter in dispute, a person was a necessary party, the court could order such person to be impleaded and merely because of the plaintiff did not choose to implead a person was not sufficient for rejection of an application for being impleaded”.

It is to be stated that the Allahabad High Court further observed as follows:

“the provisions of Order 1, Rule 10(2) C.P.C were very wide and the powers of the Court were equally extensive. Even without an application to be impleaded as a party, the court could at any



stage of the proceedings order that the name of any party, who ought to have been joined whether as a plaintiff or defendant or whose presence before the Court might be necessary in order to enable the Court effectually and completely to adjudicate upon the settle all the questions involved in the suit, be added.”

9. Admittedly, the above proposition of law, as pronounced by the High Court, are on principle and the same has to be applied having regard to the facts and circumstances of the case. It is the duty of the court to ensure that if for deciding the real matter in dispute, a person is necessary party, the court can order such person to be impleaded. Merely because the, plaintiff does not choose to implead a person is not sufficient, for rejection of an application for being impleaded. In the case on hand, the proposed third defendant claims that with respect to road portion of land, he needs to put forth his case. The plaintiffs case is that the defendants who are the public authorities taken action of breaking the fence put up for the private land owned and occupied by the plaintiffs. Even according to the proposed defendant, the road is formed for the exclusive usage of the brothers and an amicable settlement among the brothers has been effected on 30.10.1966. Therefore, the issue pertaining to the exclusive right over the 12 ft



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wide passage and the issue raised by the proposed defendant in respect of rights and interest of plaintiffs over the suit property is necessarily a matter of trial.

Therefore, this Court feels that the proposed third defendant is a necessary party. Accordingly, the proposed defendant is to be impleaded as third defendant in O.S.No.266 of 2013.

10. In view of the above observation, the order dated 05.03.2015 passed in I.A.No.1055 of 2013 in O.S.No.266 of 2013 is set aside. This Civil Revision Petition is allowed. The proposed party is impleaded as third defendant in O.S.No.266 of 2013 pending before the District Munsif Court, Alandur. Interim stay stands vacated. No costs.

12.07.2022

Index : Yes/No
Internet : Yes/No

sts/nvsri

To:

The Additional District Munsif Court,
Alandur.



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J.NISHA BANU, J.,

sts

Order made in
C.R.P.(PD).No.1625 of 2015

Dated:
12.07.2022



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Brief facts, which are necessary for the disposal of this Civil Revision
Petition are as follows:-

2.1. The suit in O.S.No.174 of 1972 has been filed by one Ponnuswami

Naicker against his brothers Rajagopal Naicker and Natesa Naicker/ defendants, seeking for the relief of declaration of title in respect of plaint 'A' and 'B' schedule properties and also for recovery of possession of plaint 'C' schedule properties., for which, the defendants have raised a contention that the court fee paid for the relief prayed for in the plaint, are not correct and had further stated that the suit is not properly valued for the purpose of court fee and jurisdiction. Lacking pecuniary jurisdiction to try the suit, the learned Judge rendered a finding that the plaint has to be returned to the plaintiff for representing the same before the proper forum after valuing the suit property under Section 7(2)(a) of the Madras Court fees and Suits Valuation Act 1955, vide judgment dated 28.07.1981.

2.2. Aggrieved against the said judgment, dated 28.07.1981 of the learned Additional District Munsif, Poonamallee, the plaintiff approached the Appellate Court, Chengalpattu by way of filing A.S.No.80 of 1989, which was also dismissed vide order dated 21.03.1990. Against the same, the aggrieved appellant preferred second appeal in S.A.No.1659 of 1990 before this Court, whereby the



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lower Court's decree was confirmed and again, the Second Appeal was also dismissed.

2.3. Later, the sons and daughter of Late Natesan Naicker/ 2nd defendant in O.S.No.174 of 1972 filed a suit in O.S.No.266 of 2013 seeking for permanent injunction restraining the defendants, their men, agents, representatives and all other claims through them from interfering with the peaceful possession and enjoyment of the suit schedule property and a direction to the defendants to pay the cost of the suit.

2.4. Meanwhile, I.A.No.1055 of 2013 was filed by the proposed third defendant, who is the son of Late Rajagopal Naicker/ 1st defendant in O.S.No.174 of 1972 to implead him as a party to the suit proceedings in O.S.No.266 of 2013 and array him as the third defendant in O.S.No.266 of 2013 under Order I Rule 10(2) and Section 151 of the Civil Procedure Code.

2.5. The learned Additional District Munsif Alandur, after analysing the submissions made on either side, rendered a finding that the proposed third



defendant is disputing the right and interest of the respondents 1 to 3/ plaintiffs over the suit property. By citing upon the settled principle of law that the plaintiff is the *dominus litus* and only the plaintiffs have the right to choose their opponent and sue against them, who interferes with their rights and they cannot be compelled to wage a war against the person in respect of whom cause of action does not arise. Further, the learned Judge, after examining the exhibits has observed that the Ex.P1 to P9 are insufficient to establish the proposed third defendant's case and had dismissed the I.A.No.1055 of 2013. Aggrieved against the dismissal of the said application, the proposed third defendant has approached this Court by way of filing the present revision.

3. The case of the revision petitioner/ proposed third defendant is as follows:-

3.1. According to the learned counsel for the revision petitioner, 'A' and 'B' schedule properties, originally forming part of larger extent, was purchased in the name of the revision petitioner's father's elder brother Ponnusami Naicker under the registered Sale Deed. It is seen that there were disputes between the revision petitioner's father's elder and younger brothers, in respect of joint family properties.



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Due to the same, a suit in O.S.No.174 of 1972 was filed by Ponnusamy Naicker against the defendants 1 and 2, Rajagopal Naicker, who is the father of the proposed third defendant/revision petitioner and Natesan Naicker and the same is not in respect of road portion of land and also not against the defendants 1 and 2 in O.S.No.266 of 2013 and submitted that the plaintiffs in O.S.No.266 of 2013 cannot take advantage of the earlier proceedings in O.S.No.174 of 1972.

3.2. It is further stated that due to an amicable settlement reached among the brothers, effected on 30.10.1966 before the 19 Panchayathars, it was decided that the 12 feet road would be formed for all the three brothers to use and there should not be any encroachment for obstructing the free passage connected Mount Madipakkam Road one side on the east and Duraisami Reddiar Land on the other side on the west and a sketch plan was also accepted and agreed and signed by all the three brothers before the Panchayathars. Therefore, the private pathway of 12 feet is only for the exclusive usage of three brothers, who were the original owners from whom the plaintiffs derived their title.

3.3. It is the contention of the learned counsel for the proposed third defendant/ revision petitioner that the plaintiffs have suppressed the material facts



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of all other interested persons in the 12 feet wide passage, including the proposed third defendant/ petitioner and the description given in the 'A' & 'B' schedule properties. After the year 1966, lot of developments have taken place and many vacant plots were purchased by subsequent purchasers. Therefore, according to the learned counsel for the revision petitioner, they are also entitled to use the 12 feet wide passage, along with him.

3.4. The main contention put forth by the learned counsel for the revision petitioner is that the filing of the suit in O.S.No. 266 of 2013 by the plaintiffs against the Commissioner of Corporation, Chennai, without impleading the interested persons in the 12 feet wide passage, has to be taken into consideration by this Court. He further added that the road portion of the land was declared as 'Road porampoke' under the Tamil Nadu Minor Inam Abolition and Conversion into Ryothwari Act, 1963 and the same was not challenged by the brothers, namely Ponnusami Naicker, Rajagopal Naicker and Natesa Naicker during their life time and the 12 feet wide passage is still available and it is recorded in the revenue records as 'road porampoke' land under S.No.257/1 as per the Assistant Settlement Officer's order. Therefore, the revision petitioner/proposed third defendant prayed for allowing the present revision and to consider him as a just



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and necessary party in the suit O.S.No.266 of 2013 pending on the file of District

Munsif Court, Alandur.

4. Learned counsel for the respondents would submit that the private pathway of 12 feet wide passage is only for the exclusive usage of three brothers, who are the original owners. He further stated that if the revision petitioner is aggrieved, it is for him to approach the competent Authorities and submit his representation, but not to get impleaded in the present suit filed by the respondents 1 to 3 / plaintiffs, who are the *dominus litus* and prayed for the dismissal of the revision.