



C.R.P.No.1752 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.No.1752 of 2015
and MP.No.1 of 2015

1.R.Samathkumar

Son of late A.Rajamanickam

209, Mullai Avenue

Sakthi Nagar East, Thindal Post

Erode-9.

2.K.Karthikeyan

Son of late Krishnasamy

36, Kurumanthur Market Road

Nallagoundenpalayam

Gobichettipalayam Taluk

Erode District.

... Petitioners/Respondents/Plaintiffs

.Vs.

M.Maheswari

...Respondent/Petitioner/3rd Party



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Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal Order in I.A.No.13 of 2014 in O.S.No.69 of 2011, dated 27.11.2014, on the file of Principal Sub Ordinate Judge, Erode.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : No Appearance
for R2

ORDER

The petitioners in this Civil Revision Petition are the plaintiffs in the suit in O.S.No.69 of 2011. The petitioners are aggrieved by the fair and final order passed by the Court below in I.A.No.13 of 2014 filed by the respondent seeking to implead herself in the place of the existing defendant. The said application was allowed by the Court below by order dated 27.11.2014 and the respondent was permitted to substitute herself as the defendant and prosecute the suit.

2.The petitioners filed the suit seeking for the relief of recovery of money against the defendant based on a promissory note. The defendant also filed the



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written statement. The respondent filed an application in I.A.No.13 of 2014, seeking to implead herself as the defendant and to continue the proceedings on the ground that her husband went missing from 03.05.2012 onwards.

3.The Court below through the fair and final order dated 27.11.2014, allowed this application mainly on the ground that there will be no representation on the part of the defendant since he has gone missing. Aggrieved by the same, the petitioners have filed this Civil Revision Petition.

4.Heard Mr.Mr.V.Lakshminarayanan, learned counsel for the petitioners. The respondent has been served and the name of the respondent has also been printed in the cause list. However, there is no appearance on behalf of the respondent either in person or through counsel.

5.The short issue that arises for consideration in the present case is as to whether the respondent is a proper or necessary party in the suit and whether she can continue to prosecute the suit in the place of her husband.



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6.In a simple money suit based on a promissory note, the negotiable instrument governs the whole transaction. Hence, only those parties to the instrument are the necessary and proper parties to prosecute the suit. A third party cannot intervene and seek to implead himself/herself in the suit since such a party was not a party to the negotiable instrument and such a party is neither a necessary nor a proper party. The Court below failed to take note of this fundamental principle of law while dealing with the application filed by the respondent.

7.A petition filed seeing for impleading a party in a suit, has to be dealt with under Order 1 Rule 10 of CPC., and the Court has to necessarily render a finding as to whether such a party is necessary or a proper party to the suit. The Court below did not even render a finding in this regard and the Court below gave a finding as if, the defendant has gone missing and hence, there will be no one to prosecute the suit and therefore in the interest of justice, his wife can be allowed to prosecute the suit. Such a finding given by the Court below is clearly illegal and unsustainable and the order passed by the Court below requires the interference of this Court.



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8. In the result, the fair and final order in I.A.No.13 of 2014 in O.S.No.69 of 2011, dated 27.11.2014, is hereby set aside and the Civil Revision Petition stands allowed. The Court below is directed to dispose of the suit in O.S.No.69 of 2011 dated 27.11.2014, within a period of **two months** from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

08.12.2022

KP
Internet
Index: Yes/No
Speaking Order: Yes/No

To
Principal Sub Ordinate Judge,
District Court Erode.



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N.ANAND VENKATESH. J.,

KP

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