



C.R.P (PD) No.628 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.R.P (PD) No.628 of 2013

& M.P.No.1 of 2015

(Through Video Conference)

1. Subramaniam alias N.S.Mani
 2. Tamilarasi
- (2nd petitioner transposed for R2)

... Petitioners/Defendants

Vs.

1. Saraswathi
2. Tamilarasi

... Respondent / Plaintiff

** R2 transposed to Status of 2nd petitioner vide court order dated 08.02.2022 made in C.M.P.No.9648 of 2020*

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal order in I.A.No.451 of 2012 in O.S.No.425 of 2001 dated 4th January 2013 on the file of the Subordinate Judge, Poonamallee.

For Petitioners : Mr.T.Lakshminarayan

For Respondent : No appearance



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ORDER

Aggrieved against the dismissal of the application in I.A.No.451 of 2012 in O.S.No.425 of 2001 on 04.01.2013 by the learned Subordinate Judge, Poonamallee, the petitioner/ defendant has filed the present Civil Revision Petition. The above I.A.No.451 of 2012 was filed under Order 1 Rule 10(2) and Section 151 of Civil Procedure Code to implead the grand daughter of the petitioner/defendant, in whose name he had settled the schedule mentioned properties lispendence.

2. The brief facts of the case are as under:-

2.1 The suit property belongs to one Natesa Naicker, who is the grand father of the respondent/plaintiff Saraswathi. She claimed during his life time, her grand father bequeathed the suit properties to herself by way of registered Will, dated 29.12.1989. After the demise of the said Natesa Naicker on 07.02.1990, the respondent/plaintiff transferred the property tax assessment in her name and she became the absolute owner of the suit properties. The petitioner/defendant Subramaniam alias N.S.Mani was the son of the deceased Natesa Naicker and father of the respondent/plaintiff. Due to property dispute, the respondent/plaintiff



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filed a civil suit in O.S.No.1158 of 1990 before the learned District Munsif, Poonamallee seeking for the grant of permanent injunction restraining the defendants, their men, agents, servants, relatives and anybody claiming under them not to demolish , alter the superstructure situated in the suit properties and thereby not to disturb the peaceful possession and enjoyment of the suit properties and for costs.

2.2 The learned Judge dismissed the above suit citing that the respondent/plaintiff failed to provide proof for her possession of the suit property and failed to substantiate her case. Against the said dismissal, an appeal was filed in A.S.No.22 of 1998 before the Sub Court, Poonamallee and the same is still pending. Thereafter, the respondent/plaintiff filed a suit for declaration in O.S.No.425 of 2001, to declare her as the sole and absolute owner of the suit properties and also to grant consequential relief of injunction, restraining the defendant, his men, agents, servants, relatives or anybody claiming under him not to alienate or encumber the suit properties.

2.3. The present petitioner, who is the defendant in the suit, thereafter filed the above I.A. to implead his grand daughter L.Tamil Arasi as a necessary party to



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the suit. The defendant, who is aged about 91 years old at the time of filing the suit is none other than the father of the plaintiff, settled the property in favour of his grand daughter in the year 2008, and filed the above impleading petition to implead L.Tamil Arasi as a necessary party in the suit, which was dismissed by the Court below, stating that the above petition was filed only to drag the proceedings.

3. The learned counsel for the petitioner/defendant placed reliance on the earlier order passed by this Court in ***V.L.Dhandapani vs. Revathy Ramachandran and others*** in C.R.P.(PD) No.1337 of 2009, allowing this application for impleading *lis pendens* by observing that, “*because of the sale that was effected a few years after the pendency of the suit, would not non-suit the purchaser pendente lite from seeking to implead himself as a party defendant*”. Here, admittedly, the petitioner/ defendant, who is the father of the plaintiff had filed a petition for impleading his grand daughter as a necessary party to the suit. The injunction suit filed by the plaintiff/ respondent in O.S.No.1158 of 1990 was also dismissed on 08.12.1997 and an appeal is also



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pending against the same. It is in this background, the present suit for declaration in O.S.No.425 of 2001 has been filed by the plaintiff/ respondent.

4. Heard the learned counsel for the petitioner/ defendant and perused the materials placed before this Court.

5. Admittedly, the petitioner/defendant, while filing the present petition in the year 2012 was 91 years old and the impleading party is the grand daughter of the petitioner/defendant and the Settlement Deed was effected in the year 2008. Therefore, the learned counsel for the petitioner/defendant only sought for impleading the grand daughter, in whose favour the properties has been settled. As a 'party defendant' it will only help the respondent/plaintiff if the title is declared in favour of her by which multiplicity of proceedings can be avoided the trial Court ought to have allowed the application to implead her as a necessary party.

6. Considering the age of the petitioner/defendant and in view of the



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dismissal of the earlier suit filed by the respondent/ plaintiff for declaration of the suit scheduled properties before the Court below, in order to meet the ends of justice, I am inclined to interfere with the order passed by the learned Subordinate Judge, Poonamallee made in I.A.No.451 of 2012 in O.S.No.425 of 2001, dated 04.01.2013, wherein the same is set aside and subsequently, impleading petition filed by the petitioner/defendant to implead L.Tamilarasi as necessary party to the suit is hereby allowed. The learned Judge is directed to dispose of the suit expeditiously, preferably, within a period of four months(04) from the date of receipt of a copy of this order.

7. Accordingly, this Civil Revision Petition is Allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2022

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Index : Yes/No
Internet : Yes/No



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To:

The Subordinate Judge,
Poonamallee.

J.NISHA BANU, J.,

sts



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Order made in
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Dated:
21.02.2022