



WEB COPY



CRP.No. 2 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 2 of 2021

and

CMP.No.34 of 2021

1.Ramasamy
2.D.Tamilselvi
3.R.Boopathy

.. Petitioners

Versus

1. Palaniyappan
2. Chandrika
3. R.K.Rangarajan
4. K.Balasubramaniam

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 07.03.2020 in I.A.No. 1486 of 2016 in O.S.No.1972 of 2011 on the file of III Additional District Munsif, Coimbatore.

For Petitioners : Mr.L. Mouli

For Respondents 1&2 : Mr.S.Mukunth
For M/s. Sarvabhauman Associates

For Respondents 3&4 : Mr.P. Ravishankar



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 07.03.2020 in I.A.No.1486 of 2016 in O.S.No.1972 of 2011 on the file of III Additional District Munsif Court, Coimbatore.

2. The revision petitioners herein are the defendants 1 to 3 and the respondents 1&2 herein are the plaintiffs in the original suit and the respondents 3&4 herein are the proposed parties in I.A.No.1486 of 2016.

3. It is the case of the respondents 1 and 2/plaintiffs that they have purchased the schedule mentioned properties from the respondents 3 and 4/proposed parties by way of Registered Document No.3671 of 2006 on the file of Sub-Registrar Office, Peelamedu, Coimbatore. Originally, the suit properties were purchased in the name of one Tmt.Thulasiammal, who is the wife of the 1st defendant and mother of the defendants 2 and 3. The said Thulasiammal died intestate during 2006, leaving behind the defendants as her legal heirs to inherit the properties. The plaintiffs, before starting construction work, measured the suit properties, as there was some difference in the measurement. The plaintiffs came to know that the defendants have



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encroached an area of 72 sqft., (36' length x 2' breath). Therefore, the plaintiffs have filed the suit.

4. Heard both sides and perused the materials available on record.

5. On a perusal of the records, it is seen that the respondents 1 and 2/plaintiffs have filed the suit in O.S.No.1972 of 2011 before the learned District Munsif, Coimbatore, for permanent injunction restraining the defendants from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties. The defendants have contested the suit by way of filing written statement as well as additional written statement and denying all the averments made in the plaint. During the pendency of the suit proceedings, the revision petitioners filed I.A.No.1486 of 2016 under Order 1 Rule 10 of CPC., seeking permission to implead the proposed parties as defendants 4 and 5 in the suit with regard to agreement dated 06.09.1987 entered between the petitioners and the proposed parties, who are the relatives of the petitioners, from whom the said suit properties have been purchased by the respondents 1 and 2/plaintiffs. After perusing the records, the Court below dismissed the said application by



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order dated 07.03.2020. Challenging the same, the petitioners/defendants have filed this revision petition before this Court.

6. On a further perusal of the records, it reveals that after commencement of the trial, chief examination of PW1 was completed on 24.06.2015 and thereafter, the revision petitioners/defendants filed a petition in I.A.No.583 of 2015 under Order 8 Rule 9 of CPC., and the same was allowed on 02.06.2016. Subsequently, The petitioners/defendants filed additional written statement along with counter claim and several opportunities were given to the respondents/plaintiffs to file reply statement in respect of the counter claim made by the petitioners/defendants. Additional issues have been framed and additional proof affidavit was also filed by the respondents/plaintiffs and now, the suit is posted for cross-examination of PW1. Subsequently, the revision petitioners/defendants filed a petition under Order 22 Rule 4 of CPC., and it was taken on file in I.A.No.1486 of 2016 under Order 1 Rule 10 of CPC., seeking to implead the proposed parties as the defendants 4 and 5 in the suit proceedings.

7. On a perusal of the impugned order, it is seen that the respondents 1



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and 2/plaintiffs are seeking mandatory injunction as well as permanent injunction against the defendants and the defendants are seeking declaration by way of counter claim, with regard to East West wall. The contention of the petitioners/defendants is that regarding the East West wall, the first petitioner, his eldest brother, and also sons of the sister of the 1st petitioner, entered into an agreement, dated 06.09.1987 and to prove the credibility of the alleged agreement, the proposed parties are necessary parties to be impleaded in the suit proceedings. But, the trial Court erred in holding that the relief by the plaintiffs in the plaint and also the counter claim relief claimed by the defendants and no cause of action arose against both parties to this case and there is no specific prayer against proposed parties without considering the scope of Order 1 Rule 10 of CPC. But, the trial Court has failed to see as per Order 1 Rule 10(2) of CPC., that the Court may add any party as defendant whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the issues involved in the suit proceedings. The trial Court ought to have noted that the revision petitioners/defendants had specifically stated in the additional written statement about the agreement dated 06.09.1987 executed between the vendors of the respondents 1 and 2 and the petitioners



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herein about the suit wall, which is in dispute and a specific prayer seeking declaration has been prayed in the counter claim and therefore, the respondents 3 and 4 are proper and necessary parties to the suit proceedings.

8. While that being the case, the respondents 3 and 4 herein, who sold the properties to the respondents 1 and 2/plaintiffs, are the sons of the sister of the first petitioner herein. With regard to the right over the East West wall, there is a dispute between the petitioners, the respondents 3 and 4 herein and elder brother of the first petitioner and they have entered into an agreement on 06.09.1987. Therefore, the alleged agreement dated 06.09.1987, the evidence and opinion of the persons who signed in the alleged agreement, are necessary for deciding the suit. Hence, they are necessary parties to the suit proceedings and no prejudice would be caused to the respondents/plaintiffs, if the impleading application is allowed. Further, the elder brother of the first petitioner, namely, G.Vaigundam (since deceased) who signed in the agreement and the credibility and content of the agreement, dated 06.09.1987 regarding the East West wall, have to be disclosed only by the proposed parties/respondents 3 and 4 herein and if the parties obeyed the agreement dated 06.09.1987, there is no necessity for filing the suit. Hence, the



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respondents 3 and 4 herein/proposed parties are necessary parties to the suit proceedings and they may be added as the defendants 4 and 5 in the suit.

9. Considering the facts and circumstances of the case and as the suit was of the year 2011 and if the parties are not willing to give any evidence on behalf of the defendants, it is left open to the parties to approach the trial and subpoena can be issued to the parties and give evidence on behalf of the defendants and the same can be considered and appropriate trial can be conducted. Hence, this Court is inclined to set aside the impugned order.

10. Accordingly, this Civil Revision Petition is allowed. The impugned order dated 07.03.2020 is set aside. The trial Court is directed to dispose of the suit in O.S.No. 1972 of 2011 as expeditiously as possible. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2022

Speaking order / Non speaking order
Neutral citation : Yes/No

To



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1. The III Additional District Munsif, Coimbatore.

2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

msm

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