



CRP (MD) No.1065 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.1065 of 2022

and

CMP (MD) No.4303 of 2022

R.Kannan

... Petitioner

Vs

1.M.Suresh

2.Ponnuthai

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the fair and decreetal order made in I.A.No.354 of 2020 in O.S.No.109 of 2019 dated 12.04.2022 on the file of the District Munsif Court, Vadipatti.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondent : Mr.M.Jothi Bashu

No.1

For Respondent : Mr.S.Sathesh Kumar

No.2



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ORDER

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This Civil Revision Petition is filed as against the fair and decreetal order passed in I.A.No.354 of 2020 in O.S.No.109 of 2019 dated 12.04.2022.

2.The petitioner herein has filed the suit in O.S.No.109 of 2019 for permanent injunction with regard to the B-schedule property and B-schedule is the common pathway for A-schedule property. Pending the suit, the second respondent / defendant has filed an application to implead herself as party stating that she is the owner of the A-schedule property and she must also be added as party to the proceedings and if any orders is passed in her absence, her right with regard to the A-schedule property would be affected. The second respondent /proposed defendant has also filed certain documents with regard to UDR patta and the subsequent settlement deed and the order of the revenue officials rejecting her request for transfer of patta by referring the suit pending before the trial Court.



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3.The trial Court considering the objection filed by the second respondent/ proposed defendant has given a finding that the second respondent is also having right over the suit A-schedule property, has allowed the petition. Aggrieved over the same, the plaintiff has filed this civil revision petition.

4.The learned Counsel for the petitioner submits that the suit itself is filed for injunction with regard to the suit B-schedule property and it is in no way connected with regard to the A-schedule property. If the second respondent/ proposed defendant is having any claim, with regard to the A-schedule property, she can establish the same by filing a separate suit and not in the suit filed by the petitioner for permanent injunction in respect of B-schedule property. The learned Counsel further submits that the observation of the Court based on the document filed by the second respondent in the interlocutory application filed under Order I Rule 10 CPC would affect the right of the plaintiff in the trial.



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5.The learned Counsel for the first respondent submits that he is a defendant in the suit. However, the *lis* is between the petitioner and the proposed second defendant and this respondent has nothing to say in this petition.

6.The learned Counsel for the second respondent/ proposed defendant submits that she is the owner of the suit A-schedule property and if any order is obtained by the petitioner in the suit in her absence, it would affect her right in the A-schedule property and therefore, she is a necessary party and she must be added as party in the suit.

7.This Court considered the rival submissions and perused the materials placed on record.

8.The suit was filed for the relief of permanent injunction with regard to the suit B-schedule property that B-schedule property is a common pathway for A-schedule property. The second respondent/ proposed defendant is also claiming right in the suit property and filed the present



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interlocutory application to implead herself as defendant to the suit proceedings. The trial Court considered the document placed by the second respondent and has given finding without even conducting trial that the second respondent/ proposed defendant is having right over the A-schedule property. The said observation of the trial Court is removed. The order of the trial Court observing that the second respondent/ proposed defendant is having right over the property has to be decided in the suit.

9.Since the second respondent/ proposed defendant has also produced revenue records claiming title over the A-schedule property, the second respondent/ proposed defendant is also necessary party to the proceedings, this civil revision petition is disposed with a direction to the trial Court to decide the right of the parties after conducting trial and based on the oral and documentary evidence. No costs. Consequently connected miscellaneous petition stands closed.

18.10.2022

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B.PUGALENDHI, J.

dsk

To

The District Munsif Court,
Vadipatti.

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