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C.R.P.No.950 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Civil Revision Petition.No.950 of 2023
and C.M.P.No.7046 of 2023

K.Nithiyanndam

... Petitioner

Vs.

1. D.Devaki
2. K.Mohan
3. K.Purushothaman
4. K.Radha
5. K.Palani
6. Rajeswari
7. Shanthi
8. T.Nagaraj
9. T.Srinivasan
- 10.Lakshmi
- 11.Pushpa
- 12.T.Kumar
- 13.R.Thanigaivelu
14. Mallika



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15. J.Ravikumar

16. J.Murthy

17. J.Manikandan

18. J.Devi

19. T.Ramesh

20. R.Sathyavanthi
Respondents

...

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 16.02.2023 passed by the learned XV Additional City Civil Court, Chennai, in I.A.No.94 of 2013 in O.S.No.2583 of 2013.

For Petitioner : Mr.J.Sudhakaran

ORDER

This Civil Revision Petition is filed aggrieved by the dismissal of I.A.No.94 of 2013 in O.S.No.2583 of 2013 dated 16.02.2023 on the file of the XV Additional City Civil Court, Chennai.

2. The respondent/plaintiff No.6 has filed a suit against the respondents/defendants seeking for partition and separate possession of 1/4th share in the 'A', 'B', and 'C' schedule of properties and for declaration that the settlement deed dated 14.12.2011 executed by the 8th defendant in favour of 14th defendant is abinitio null and void and unenforceable in law and



consequently for permanent injunction restraining the defendants from creating any encumbrance or raising any constructions in respect of 1/4th share in plaintiff's 'C' schedule property.

3. The learned counsel for the petitioner submits that the petitioner has filed I.A.No.94 of 2013 under Order 1 Rule 10 of Code of Civil Procedure for impleading proposed party as fifteenth defendant in O.S.No.2583 of 2013 on the ground that fourteenth defendant has executed settlement deed in respect of “c” schedule of property on 06.08.2012 in favour of the proposed fifteenth defendant.

4. It is submitted by the learned counsel for the respondents that though the respondents do not have any objection for impleading, the proposed party as fifteenth defendant, no purpose would be resolved until a prayer is sought for seeking cancellation of settlement deed dated 06.08.2012 through which fourteenth defendant executed settlement deed in favour of the fifteenth defendant. It is also submitted by learned counsel for the respondents that the petitioner has no limitation even to challenge the same.

5. Order I Rule 10 C.P.C. runs as under:-



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"10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant



(5) Subject to the provisions of the [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

6. The plaintiffs after coming to know that the settlement deed dated 06.08.2012 was executed as Document No.3979/2012 by 14th defendant in favour of his wife R.Sathyavathi they filed I.A.No.94 of 2013 to implead the said R.Sathyavathi as 15th defendant for effectually adjudicating the issues in question raised before the Court. The said application was opposed by the proposed party who is the wife of 14th defendant stating that she is not a necessary party and the findings in respect of the issues will bind on her thereby sought for dismissal.

7. The trial Court by considering both sides has dismissed the same holding that 14th defendant who is executed settlement deed dated 06.08.2012 was arrayed as one of the defendants thereby the decision against 14th defendant would bind on 15th defendant. This suit is filed in the year 2013. There is no dispute that prior to filing of the suit 14th defendant has executed settlement deed in favour of his wife R.Sathyavathi. That means, even as on the date of filing of the suit, 14th defendant has no right so far as



the property covered under the settlement deed dated 16.08.2012. Therefore, when 14th defendant is not the owner of the property even as on the date of filing of the suit, since his wife R.Sathyavathi has acquired some interest over the part of the property covered by the settlement deed dated 16.08.2012 the proposed party is a necessary party.

8. Further, the rights of the proposed party may not be properly adjudicated in case if she is not made as a party because 14th defendant who has executed settlement deed may not be interested in defending the case so far as the property covered by the settlement deed. Above all, the other parties to the suit have reported no objection for impleading the petitioner.

9. Therefore whatever interest 14th defendant has in respect of the schedule of property, same was settled in favour of fifteenth defendant. If fourteenth respondent is a necessary party on account of execution of settlement deed proposed party also becomes necessary party. Further, no prejudice will be caused to either of the parties in case if the proposed party is impleaded as fifteenth defendant.

10. Considering above, this Civil Revision Petition is disposed of,



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directing the trial Court to implead the proposed party as fifteenth defendant and thereafter directing to expedite the trial and dispose of the same within a period of eight months from the date of framing of issues framed after impleading the proposed party as fifteenth defendant. No costs. Consequently, connected miscellaneous petition is closed.

30.06.2023

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Index:Yes/No

Speaking Order: Yes/No



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Dr.D. NAGARJUN, J.

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To
The learned XV Additional City Civil Court,
Chennai.

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