



C.R.P.(NPD).No.782 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.07.2023**

CORAM

**THE HONOURABLE MR.JUSTICE V.
LAKSHMINARAYANAN**

C.R.P.(NPD).No.782 of 2016

N.G.Srinivasan

... Petitioner

Vs

1.G.Nithyanandam

2.P.S.K.Finance 7 chit Funds Ltd.,
Represented by its managing Director,
Having office bazaar street,
Salem - 1

3.The Sub Registrar,
Valapady Office,
Valappady Post & Taluk,
Salem District.

... Respondents

PRAYER:-Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India to set aside the order in I.A.No.39 of 2013 in A.S.No.34 of 2013, dated 04.01.2014 on the file of the I Additional Subordinate



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Court, Salem.
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For Petitioner : Mr.P.Jagadeesan
For Respondents : Mr.T.Murugamanickam
Senior counsel
for Ms.Zeenath Begum

ORDER

The Civil Revision Petitioner is the 2nd defendant in the suit.
The suit had been filed for a declaration and mandatory injunction
by the 1st respondent.

2.The said suit was dismissed on the ground that the suit is
unusually delayed. The learned trial Judge referred to Order 21
Rule 58 of the Code of Civil Procedure. Whether the trial Court
was right in holding a suit for title can be dismissed on grounds of
delay referring to Order XX1 Rule 58 is a matter to be gone into
by the trial Court. I have my own reservations on the same.

3.Aggrieved by the judgment and decree in O.S.No.119 of



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2010, the plaintiff preferred A.S.No.34 of 2013 before the Ist Additional Subordinate Court of Salem. An application was moved for, impleading the judgment debtors, from whom the 2nd defendant had purchased the property. The said application was allowed and challenging the same, the present Revision has been filed.

4.Mr.P.Jagadeesan, learned counsel appearing for the petitioner would submit that the impleading application has been filed after prolonged delay and despite the fact that the plea was taken in the written statement, no steps were taken to implead the judgment debtors in O.S.No.2639 of 1978.

5.Mr.T.Murugamanickam, learned Senior Counsel appearing for Zeenath Begum would state that under Order I Rule 10(2) of Code of Civil Procedure, parties can be impleaded at any stage of the proceedings. The appeal being the continuation of the



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suit, the lower Appellate Court did not commit any error in impleading the parties.

6.The defendants in O.S.No.2639 of 1978 are the proposed parties Rajammal and S.C.Kanchamalai. They became the judgment debtors. In the execution proceedings, their property was brought for auction and was purchased by the Civil Revision petitioner/ 2nd defendant Mr.N.G.Srinivasan. The plaintiff Nithiyanandam claims an independent right over the suit scheduled mentioned property.

7.Under Order XXI Rule 92(4) of Code of Civil Procedure, in a suit challenging the title of the judgment debtors, the judgment debtors and the decree holder are proper and necessary parties. Mr.Jagadeesan is absolutely right that the judgment debtors have not been impleaded in the suit. However that has been now rectified by way of an application in the appeal.



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8.As rightly contended by Mr.T.Murugamanickam, the power under Order I Rule 10(2) can be exercised at any stage including the second appellate stage. The Court of first appeal is the last Court on facts and law. Therefore, technical pleas must not stand in the way in order to do complete justice between the parties.

9.Once the Code of Civil Procedure Code holds that in a suit challenging the title of the judgment debtors they are proper and necessary parties, even if the property has been auctioned and purchased by a third party, the impleadment of the judgment debtor under Order I Rule 10 is but automatic. The learned Judge has rightly appreciated the position of law and allowed I.A.No. 39 of 2013 to implead the proper and necessary parties. I do not find any error or perversity in the order and accordingly, the above captioned Civil Revision Petition is dismissed.



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10.The suit is of the year, 2010 and the first appeal is of the year 2013. The learned I-Additional Subordinate Judge, Salem is requested to take up the first appeal in A.S.No.34 of 2013 on priority basis and have the same disposed of within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

06.07.2023

gba

Index: Yes/ No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

To

The District Munsif Court,
Salem.

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