



C.R.P.No.1764 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.No.1764 of 2019
and CMP No.11471 of 2019

K.K.Ramesh

.. Petitioner/Petitioner/Plainti

.Vs.

1.Velumani

2.Maruthamuthu

3.K.Vellachi @ Palaniammal

4.Subramani

5.Ramasamy

.. Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the judgment and decree passed by the Sub Court, Udumalpet made in I.A.No.745 of 2018 in O.S.No.114 of 2012 dated 13/12/2018 pending on the file of the Sub Court, Udumalpet.

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.D.R.Arun Kumar
for R1, R2

R3 to R5 - No such person



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ORDER

This Civil Revision Petition has been filed by the plaintiff questioning the fair and decreetal order passed in I.A.No.745 of 2018 in O.S.No.114 of 2012 dated 13/12/2018, dismissing the application filed under Order 1 Rule 10(2) CPC., to add Syndicate Bank as the 6th defendant in the suit.

2.Heard Mr.N.Umapathi, learned counsel for the petitioner and Mr.D.R.Arun Kumar, learned counsel for R1, R2.

3.The petitioner filed a suit against the respondents seeking for the relief of declaration of title and permanent injunction. During the pendency of the suit, the petitioner became aware of the fact that the 1st respondent has given the suit property as security to the Syndicate Bank and a mortgage has been created over the suit property and hence, the petitioner filed an application to implead the Syndicate Bank as the 6th defendant in the suit since the bank was deemed to be a proper party.

4.The Court below on considering the rival contentions, dismissed the application filed in I.A.No.745 of 108 mainly on the ground that the petitioner did not seek for any relief as against the bank and the bank is neither a necessary party nor a proper party and accordingly, the application filed for impleading the bank was



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5.In the considered view of this Court, 1st respondent/1st defendant had given security by way of mortgaging the suit property in favour of the Syndicate Bank. The petitioner is seeking for declaration of title over the very same property. Hence, the bank has to necessarily be made as a party in this suit since no judgment should be passed behind the back of the bank. Even though, the bank is not a necessary party, it is certainly a property party since the Court below can completely and effectively adjudicate the dispute only if the bank is made a party in the suit. Therefore, the finding given by the Court below as if the petitioner did not seek for any relief as against the bank and therefore the bank cannot be impleaded as the defendant, is unsustainable.

6.In the light of the above, the fair and decreetal order passed by the Court below in I.A.No.745 of 2018 in O.S.No.114 of 2012 dated 13.12.2018, is hereby set aside. The Court below is directed to complete the proceedings in O.S.No.114 of 2012 within a period of **six months** from the date of receipt of copy of this order and report compliance before this Court.

N.ANAND VENKATESH. J.,



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7.In the result, this Civil Revision Petition is allowed with the above directions.

No costs. Consequently, connected miscellaneous petition is also closed.

10.01.2023

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Internet: Yes

Index: Yes/No

Speaking Order: Yes/No

To
Sub Court,
Udumlpet.

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