



C.R.P.No.2120 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2120 of 2019
and C.M.P.No.13676 of 2019

K.Sudha

... Petitioner

Vs.

1.P.Kumarasamy
2.S.Karuppannan
3.Thilagavathi
4.K.Sathishkumar
5.K.Balamurugan

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.36 of 2019 on the file of the District Munsif, Sankari.

For Petitioner : Mr.S.Conscious Ilango

For Respondent : Ms.Monolisa for
Mr.R.Marudhachalamurthy for R1
R2 – R5 – No appearance



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ORDER

This is a revision filed seeking to invoke the supervisory jurisdiction of this Court under Article 227 of Constitution of India in order to strike off O.S.No.36 of 2019 on the file of the District Munsif Court, Sankari. During the course of the proceedings, I am informed that the suit has been now transferred to the newly created Court and renumbered as O.S.No.309 of 2019 on the file of the District Munsif Court, Edappadi.

2. The only ground that was urged by the learned counsel for the petitioner is that the suit is collusive in nature and the defendants are trying to get a right of easement over the property which belongs to him. He would draw my attention to paragraph 11 of the plaint to state that though the name of the petitioner finds a place, she has not been impleaded as a party. On account of that fact, he would urge that the property situated in S.No.82/1E is his own property and is not a cart track. He fears that if the suit is decreed, then taking advantage of the



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decree, the plaintiff will come and interfere with the possession of the property, of which, he is the owner.

3.The answer to this issue is not too far to see. In a suit for declaration, the Court does not create a new right of the party in order that it will be enforced against the third party. The Court only recognises a right which already exists in a party. A suit for easement is not a suit *in rem* to be binding even on third parties to the proceedings. Therefore, if Sudha is not made a party to the proceedings and a decree is passed in O.S.No.36 of 2019 (now presently O.S.No.309 of 2019) will not be binding on her. Non-impleading of necessary parties is not a ground to strike off the suit. Therefore, I decline to exercise my powers under Article 227 of Constitution of India to strike off the plaint. If the decree is obtained as without impleading Sudha as a party, the same will not be binding on her. To reiterate, if a decree is obtained in the suits, when the civil revision petitioner is not a party, it will not be binding on her.



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3. At this stage, Ms.Monalisa, learned counsel representing Mr.R.Marudhachalamurthy would submit that she has taken out an application in I.A.No.4 of 2023 to implead the said Sudha as a 5th defendant to the suit.

4. The civil revision petitioner apprehending that the decree may be obtained and that having been rectified by filling an application in I.A.No.4 of 2023, the learned District Munsif, Edappadi, is requested to allow I.A.No.4 of 2023 and implead the said Sudha as a party to the suit. She is a proper and necessary party as would be clear from the averments made paragraph No.11.

5. With the above direction, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

20.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

1. The District Munsif, Sankari.
2. The District Munsif, Edapaddi.



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V.LAKSHMINARAYANAN,J.

Vkr

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