



CRP.No. 1752 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1752 of 2020

and

CMP.No. 10830 of 2020

Kumaravel

.. Petitioner

Versus

1. Ramasamy
2. The District Collector
Villupuram Town and Taluk
Villupuram District.
3. The Director
DRDA Villupuram
Villupuram Town and Taluk
Villupuram District.

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 03.03.2020 passed in I.A.No. 102 of 2020 in O.S.No. 73 of 2019 on the file of the Principal District Munsif, Kallakurichi.



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For Petitioner : Mr.R. Nalliyappan
For R1 : Mr.M. Sudhan
for Mr.A. Rajakumar
For RR 2 and 3 : Mr.B. Tamil Nidhi
Additional Government Pleader

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 03.03.2020 passed in I.A.No. 102 of 2020 in O.S.No. 73 of 2019 on the file of the Principal District Munsif, Kallakurichi.

2. The revision petitioner is the plaintiff and the respondents 2 & 3 are the defendants in the original suit. The 1st respondent is a proposed third defendant in the suit.

3. Heard both sides and perused the materials available on record.

4. On a perusal of the records, it is seen that the revision petitioner/plaintiff has filed the suit in O.S.NO. 73 of 2019 before the Principal District Munsif Court, Kallakurichi, against the defendants 2 & 3 for permanent injunction restraining the defendants from in any manner



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interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Pending the suit, the 1st respondent has filed I.A.No. 102 of 2020 in O.S.No.73 of 2019 under Order 1 Rule 10 of the Code of Civil Procedure. After perusing the records, the trial Court allowed the application by the impugned order dated 03.03.2020. Aggrieved by the said order, the revision petitioner/plaintiff has filed the present Civil Revision Petition.

5. The case of the revision petitioner/plaintiff is that the pathway through the river is running from Somandargudi Kudiyiruppu to the property belonged to the 1st respondent/3rd proposed defendant. The pathway got illegally destroyed and it was used by the 1st respondent as a land, and the agricultural land is without leaving any pathway. Hiding these facts, the 1st respondent filed the application to restore the pathway. The pathway used by the 1st respondent is not the common pathway, which leads to the village. The said pathway was not sold to the Government or to any third party. The father of the 1st defendant/Kumarasamy purchased S.No.168/2C/3 measuring an extent of 4.84 cents and S.No. 168/3 measuring an extent of 1.66 cents and totally, 6.50 cents from Velapillai and others for a sale consideration of Rs.20,000/- in the year 1973. From the date of purchase, the



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revision petitioner's father laid a pathway in the land and he enjoyed the pathway without any disturbances and on both sides of the pathway, there were lands belonging to the 1st defendant. The 1st respondent or any other person has no right over the said property and the petitioner prays to set aside the findings of the trial Court.

6. On the other hand, the 1st respondent would submit that the suit property is a primitive Village road, Sadayampattu, Somandargudi and numerous villagers are using it as the only access from Kachirayapalam to Kallakurichi main road. The Government has taken steps to repair the primitive road and the blue metal tar road has already been re-set and one Pazhaniappa Kounder resisted the repairing of the road that was damaged due to efflux of time, by preferring suit in O.S.No.517 of 2009, wherein the 1st respondent and numerous other villagers have implicated the parties to the said litigation who have common interest over the road in dispute, stating that it is their only ingress and egress ever since time immemorial. During the pendency of the suit proceedings, the revision petitioner/plaintiff has initiated another round of litigation by preferring the present suit in O.S.No. 73 of 2019 furnishing false information that the road is yet to be set up while



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the tar road is already existing there. However, the plaintiff has intentionally avoided all the villagers who are interested in the suit pathway and the Government remained ex-parte, supporting the case of the revision petitioner/plaintiff. The Government side, having intentionally remained ex-parte in support of the plaintiff case, on any account, if ex-parte injunction is granted, and already laid tar road may be endangered and be prevented by such ex-parte injunction from using the suit pathway for the daily routine and to carry out our agricultural produce along the suit pathway. This will lead to irreparable disturbance on public tranquility. Therefore, the 1st respondent has filed this petition permitting him to get implicated as 3rd defendant in the suit and permit him to file written statement and contest the case on a valid grounds and decide the same on merits and thereby, render justice. Hence, the respondents pray to dismiss the above Revision.

7. It is the further case of the revision petitioner/plaintiff that the Court below ought to have appreciated the fact that, on the representative capacity, the 1st respondent claims to implead in the above suit without getting proper permission from the Court below, which is not sustainable. The Court below erred in not considering the fact that the 1st respondent encroached over the



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public road and doing agricultural work, whereas the petitioner herein acquired the property, which is subject matter of the suit property ancestrally and patta also stands in the name of the revision petitioner. Under such circumstances, due to the political influence, the respondents 2 and 3 have taken steps to lay a tar road in the suit property and the petitioner has filed the suit for injunction against the respondents 2 & 3. Hence, the 1st respondent has no *locus standi* to implead him as party to the above suit. The Court below has failed to consider that there are specific allegations against the 1st respondent in the plaint and there is no cause of action as pleaded against him and it is not correct to implead him as one of the defendant and hence, the respondent prays to allow the above Revision.

8. The contention of the 1st respondent is that the proposed party has to be added in the main suit. At the outset, it would be relevant to delve into the scope of Order 1 Rule 10 (2) CPC. If any person has interest in the suit property, then, he has to be added as a party for an effective and complete adjudication. In this regard, the trial Court had referred to the order of this Court in **Duraikannu Padaiyachi v. Meera** reported in **2003 (3) MLJ 67**, wherein it has been stressed upon that all the persons interested in the



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property, should be impleaded as party for proper and complete adjudication of the suit.

9. Further, the trial Court had observed that Order 1 Rule 10(2) CPC has given wider powers to the Court to join any party to the proceeding and either upon an application by party or on its own motion, shall enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. In this regard, the decision reported in **2010 (3) TLNJ 109 (Civil) Venkatachalam v. Govindan and D.Vedanayagam and another v. Raja and Ors.**, reported in **2009 (2) TLNJ 529 (Civil)**, has been relied upon, whereas, this Court has elaborately dealt with the scope of Order 1 Rule 10 CPC and the relevant portions in the said decision are, "A party can also be impleaded when the relief prayed for in the proceedings is sought to be made binding on him or when it is felt that he would be adversely affected by the ultimate outcome of the proceedings." Further, in a nutshell, it is clear that the tests to be applied for determining the right of a party to implead another, in a pending suit or other processing, may be crystallized into the following categories:-

"(a) If, without his presence, no effective and complete



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adjudication could be made, (b) if his presence is necessary for a complete and effectual adjudication of the dispute, though no relief is claimed against him, (c) if there is a cause of action against him, (d) if the relief sought in the suit or other proceedings is likely to be made binding on him, (e) if the ultimate outcome of the proceedings is likely to affect him adversely and (f) If his role is really that of a necessary witness, but is sought to be camouflaged as a necessary party."

10. At this juncture it would be relevant to extract the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure which deals with the powers of the Court to strike out or add parties.

"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."

11. It would be relevant to refer the judgment of the Hon'ble Apex Court in **Mumbai International Airport (P) Ltd. v. Regency Convention**



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Centre & Hotels (P) Ltd. reported in **(2010) 7 SCC 417**, wherein it has been held as follows:-

"12. Let us consider the scope and ambit of Order 1 of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the Court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either *suo motu* or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The Court can strike out any party who is improperly joined. The Court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the Court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the Court will of course act according to reason and fair play and not according to whims and caprice. This Court in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* - 1981 (1) SCC 80, reiterated the classic definition of 'discretion' by Lord Mansfield in *R. v. Wilkes* - 1770 (98) ER 327, that 'discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague, and fanciful, 'but legal and regular'

12. On perusal of the above it would be evident that Order 1 Rule 10(2) CPC carves out an exception to the general rule of *dominus litis* and



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the Courts has discretionary power to add a party to the proceedings who ought to have been joined or whose presence is necessary for effectually and completely adjudicating all questions involved in the suit.

13. The learned counsel for the 1st respondent would also submit that the Government has not taken up the matter seriously and he has not filed any written statement. It is necessary that he is necessary party to prove and the villagers are using the said land pathway. Regarding the said pathway, which has been already acquired as tar road and to decide the issue properly are whether there is existing primitive tar road. All these facts are to be adjudicated only before the Trial Court and hence, this Court is of the view that the 1st respondent shall file written statement if any.

14. With the above observations, the Civil Revision Petition is disposed of. The trial Court is directed to complete the trial and dispose of the suit in O.S.No. 73 of 2019. After giving sufficient opportunities to the parties concerned, as expeditiously as possible. There shall be no order as to costs in this revision. Consequently, connected Miscellaneous Petitions are closed.



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Speaking order : Yes/No
Neutral Citation : Yes/No
Index : Yes/No
msm

To

1. The Principal District Munsif, Kallakurichi.
2. The Section Officer, V.R.Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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