



C.R.P.(NPD)No.4264 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.4264 of 2018
and C.M.P.No.23357 of 2018

1.Dhanalakshmi

2.Muthu

3.Arumugam

4.Elumalai

5.Shanthi

6.Ganesan

.. Petitioners

Vs.

1.Muniammal (died)

2.Krishnaveniammal

3.The Tamil Nadu Slum Clearance Board

Represented by its Chairman

Kamarajar Salai

Chennai-600 005.

4. M.Ravi Kumar

5.M.Venkatesan

6.S.Rajeswari

7.M.Uma Mageshwari

.. Respondents

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(1st respondent died and the respondents 4 to 7 brought on record as the legal heirs of the deceased 1st respondent viz., Muniammal vide Court order dated 29.03.2023 made in C.M.P.Nos.2196, 2198 & 2200 of 2023 in C.R.P.No.4264 of 2018)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.02.2018 made in C.M.P.No.63 of 2016 in A.S.No.62 of 2016 on the file of the XVI Additional Judge, FAC, XVII Additional City Civil Court, Chennai.

For Petitioners : Mr.S.Shanmugasundaram

For R3 : Mr.B.Balaji
for Mr.S.Karthikeyan, Standing Counsel
for Slum Clearance Board

For R4 to R7 : Mr.B.Dinesh Kumar

ORDER

Heard both sides and perused the entire materials on record.

2. The civil revision petitioners are the plaintiffs and the respondents are the defendants. The suit schedule mentioned property



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was allotted in favour of one Annammal. Annammal had three daughters namely, Muniyammal, Krishnaveniammal and Ellammal. Ellammal's legal heirs are the plaintiffs. They presented a suit in O.S.No.8415 of 2009 seeking for partition and other reliefs. In the Court below, they moved an application in I.A.No.21632 of 2010 to implead the Tamil Nadu Slum Clearance Board as a party defendant to the suit. That application came to be dismissed by an order dated 25.11.2011.

3. Several issues were raised, one such issue was that the sale deed executed in favour of Muniyammal, the 1st defendant, is hit by limitation. The Court below returned a finding that the suit having been presented within a period of two years from the date of knowledge is not barred by time. The dismissal of the application in I.A.No.21632 of 2010 has been challenged as required under Section 105(1) of the Code of Civil Procedure in the grounds of appeal A.S.No.62 of 2016, in particular ground No.18. Pending the appeal, an application in C.M.P.No.63 of 2016 was taken out to implead the Tamil Nadu Slum Clearance Board as



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a party in the appeal. The said application came to be dismissed by an order dated 22.02.2018. The said order is put in challenge before me.

4. The ground on which the learned trial Judge has dismissed the application is that the order in I.A.No.21632 of 2010 has not been challenged by way of a revision and therefore, the said order having attained finality, impleading petition in the appellate proceedings is not maintainable.

5. The learned trial Judge has overlooked the fact that there is certain difference between Section 105(1) and 105(2) of C.P.C. It is the correctness of an order passed by the Court by an order of remand, which cannot be challenged under Section 105(2) of C.P.C. However, under Section 105(1) of C.P.C., where no appeal lies, the correctness of the order can be taken as a ground of objection in the memorandum of appeal.



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6. As already premised, the correctness of the order had been challenged before the lower Appellate Court in ground No.18, it is not necessary that a party must challenge every interlocutory order, for which an appeal is not provided for either under 104 of the C.P.C. or under Order XLIII Rule 1 or I.A., by way of a revision. The purpose of incorporating Section 105(1) of C.P.C. is to enable the parties to challenge any order passed against which, no appeal lies as before the lower Appellate Court. That having been done, the first finding given by the lower Appellate Court fails as it is contrary to the statute.

7. In so far as the second objection as regards the belated application is concerned, both the parties agreed that the property originally belonged to the Tamil Nadu Slum Clearance Board. There is no denial that the allotment was made in favour of Annammal, since Muniyammal claims to have paid all the instalments, the sale deed was executed in favour of Muniyammal. Whether Muniammal holds the



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property in herself or holds it on behalf as a trustee for the other members of the family is an issue, which has been gone into at the time of appeal, on which I am not entering upon any finding. Hamlet cannot be played without the Prince of Denmark. The suit originally, which belongs to the Slum Clearance Board cannot proceed without the Slum Clearance Board being a party. The Slum Clearance Board is a proper and necessary party to the proceedings and hence, the lower appellate Court ought to have impleaded the Slum Clearance Board as a party defendant to the suit.

8. The power under Order I Rule 10 of C.P.C. can be exercised at any stage, even at the stage of Second Appeal. There is no bar under Order I Rule 10 of C.P.C., to implead the parties, who are found proper and necessary at the appellate stage. If a partition suit is going to be dismissed on the ground of non-joinder of necessary party, it will give rise to a never ending cycle of litigation. A party would present a fresh suit impleading the necessary parties. In order to shorten the litigation and to give a quietus to the entire proceedings, since I found the Slum



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Clearance Board is proper and necessary party, C.M.P.No.63 of 2016 in A.S.No.62 of 2016 shall stand allowed and the order of the lower Appellate Court dated 22.02.2018 is set aside.

9. Accordingly, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.08.2023
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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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To

XVI Additional Judge
FAC, XVII Additional City Civil Court
Chennai.



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V.LAKSHMINARAYANAN,J.

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