



C.R.P.(MD).No.66 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| <b>Reserved on</b>   | <b>04.08.2023</b> |
| <b>Pronounced on</b> | <b>21.12.2023</b> |

CORAM

**THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.66 of 2023  
and  
C.M.P.(MD) No.315 of 2023

M.P.Vinayagam

...Petitioner

Versus

1.T.Gomu

2.K.Subbiah

... Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of Constitution of India to setting aside the fair and executable order dated 09.12.2022 passed in the application in I.A.No.03 of 2022 in O.S.No.104 of 2009 on the file of the Additional District Munsif Court, Ambasamudaram.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.R.J.Karthick



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## **ORDER**

This Civil Revision Petition is preferred against the order dated 09.12.2022 passed in I.A.No.3 of 2022 in O.S.No.104 of 2009 on the file of Additional District Munsif Court, Ambasamudram.

2. According to the revision petitioner, the revision petitioner as plaintiff filed a suit in O.S.No.104 of 2009, before the Additional District Munsif Court, Ambasamudram praying for a decree of declaration that the suit wall exclusively belonged to the revision petitioner/plaintiff and for a consequential decree of permanent injunction restraining the 1<sup>st</sup> respondent from interfering with the revision petitioner/plaintiff peaceful possession and enjoyment of the suit wall; for decree of declaration that the site adjacent to the suit wall also belong to the revision petitioner/plaintiff and for consequential decree of mandatory injunction directing the 1<sup>st</sup> respondent/ 1<sup>st</sup> defendant to remove the encroachment made by her over the same and for costs.

3. The 1<sup>st</sup> respondent entered appearance and filed her written statement. According to the plaintiff, she did not specifically plead that a



portion of the suit property belong to her husband, the second respondent herein. The further contention of the petitioner is that the document, under which, the second respondent accrued the right over the portion of the suit property was also not pleaded. It is further submitted that, during trial, the counsel for the petitioner issued a notice to the 1<sup>st</sup> respondent for production of documents and only thereafter, the 1<sup>st</sup> respondent produced the sale deed in favour of the 2<sup>nd</sup> respondent. Only thereafter, the petitioner came to know that the name of the vendor of the 1<sup>st</sup> and 2<sup>nd</sup> respondent as well as the name of the 2<sup>nd</sup> respondent are one and the same, namely, Subbiah. This resulted in some confusion and hence, the petitioner did not implead the 2<sup>nd</sup> respondent as defendant at the time of institution of the suit. Thereafter, he filed an application in I.A.No.03 of 2022 under Order I Rule 1 of Code of Civil Procedure, 1908 to implead the 2<sup>nd</sup> respondent as a party to the suit. However, the trial Court erroneously dismissed the said application by stating that the said application is barred by limitation.

4. The learned counsel appearing for the revision petitioner would submit that the trial Court failed to consider the provisions of Order I Rule 10(5) of CPC, Section 22 of the Indian Limitation Act, 1877 and Section 21 of the Limitation Act, 1963. He would submit that the Order I Rule 10 and



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Order VI Rule 17 of CPC are different in nature and the trial Court failed to note that the Order I Rule 10 (5) of CPC and the provisions of Section 22 of Indian Limitation Act, 1877 corresponding to Section 21 of the Limitation Act, 1963 is applicable. His further contention is that the period of limitation so far as the newly added or substituted party is concerned shall run from the date of implementation in the suit. He would contend that Section 21 of Limitation Act provides that where after the institution of the suit, if a new plaintiff or defendant is substituted or added, the suit shall, as regard him, be deemed to have been instituted when he was so made in party.

5. On the other hand, the learned counsel appearing for the respondents/defendants referred the proviso to Section 21 of the Limitation Act and on the strength thereof argued that even if the application for impleadment of the second defendant is allowed, the said order has to be understood as if impleadment of the second defendant with effect from the date of filing the suit. If that so, the impleadment of the second defendant is time barred. There is no substance in the said argument of the learned counsel appearing for the respondent. Order 1 Rule 10 CPC provides that the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bonafide mistake, and that it is necessary for the



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determination of the real matter in dispute so as to do, order any person to be substituted or added as plaintiff or defendant upon such terms as the Court thinks just. In order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit any person who ought to have been joined, whether as plaintiff or defendant, whose presence before the Court may be necessary be added. As per Order 1 Rule 10 (5) CPC, subject to the provisions of the Indian Limitation Act 1877, Section 22 the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. The object of the provision under Order 1 Rule 10 CPC is to avoid multiplicity of proceedings. Where the impleadment of the said party is necessary and vital for the decision of the suit. Section 21 of the Limitation Act provides that where after filing of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been brought on the day when he was added or substituted as a party in the suit. Therefore, in the facts and circumstances of the present case Order 1 Rule 10 (5) of CPC and the provisions of Section 22 of Indian Limitation Act, 1877 corresponding to Section 21 of the Limitation Act, 1963 is applicable.



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6. In the result, the order of the trial Court is liable to be set aside and the revision petition is allowed. The trial Court is also directed to dispose the suit as early as within a period of six months by giving sufficient opportunities to the parties concerned. Consequently, connected miscellaneous petition is closed.

**21.12.2023**

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Index: Yes/No

Speaking Order : Yes/No

To

The Additional District Munsif Court, Ambasamudaram.



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**K.GOVINDARAJAN THILAKAVADI,J.**

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Order made in

C.R.P.(MD) No.66 of 2023  
and  
C.M.P.(MD) No.315 of 2023

**21.12.2023**