



C.R.P.(MD)No.294 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.294 of 2019

Chinthal Jakkamal ... Petitioner / 1st Respondent/Plaintiff

Vs.

1.K.Jothi ... 1st Respondent/ Petitioner/Proposed party

2.Baskaran ... 2nd Respondent/ 2nd Respondent/Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the executable order and fair order, dated 30.11.2018, made in I.A.No.212 of 2018, in O.S.No.26 of 2018, on the file of the District Munsif, Bodinayakanur.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents : Mr.C.M.Arumugam for R1

: No appearance for R2

ORDER

The instant Civil Revision Petition has been filed against the order dated 30.11.2018, made in I.A.No.212 of 2018, in O.S.No.26 of 2018, on the file of the District Munsif, Bodinayakanur.



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2. The revision petitioner herein is the first respondent / plaintiff, the first respondent herein is the petitioner / proposed party and the second respondent herein is the second respondent /defendant before the Court below.

3. For the sake of convenience, the parties are referred to according to their litigative status before the Court below.

4. It appears that the plaintiff has filed the suit against the defendant -Baskaran. The said Baskaran is the brother of one Kasi. According to the plaintiff, the said Kasi and his wife K.Jothi, who is the proposed party herein, executed a sale agreement in favour of the plaintiff. It is the further contention of the plaintiff that the proposed party as well as the defendant are attempting to evict the plaintiff from the suit property. In this regard, they have already given a police complaint, hence, the plaintiff filed the suit against the defendant, who is the brother of Kasi.



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5. It appears that in the said suit property, the said Jothi has moved an application to implead herself as the party to the proceeding on the ground that she has not entered into any sale agreement, and she would also submit that she never gave any possession of the property, and that the plaintiff is attempting to get the relief behind their back, therefore, she would submit that she is a necessary and proper party to the suit and prayed to implead the suit.

6. The said application was strongly resisted by the respondent/defendant. However, the Court below, after hearing either side, vide impugned order dated 30.11.2018, has allowed the application.

7. Aggrieved with the said order, the plaintiff has approached this Court by way of this Civil Revision Petition.

8. The learned counsel for the plaintiff would vehemently submit that the very order passed by the Court below do not contain any



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reason as to why the application has been allowed and there is no discussion whether the proposed party is necessary or proper party. Therefore, the learned counsel for the plaintiff prayed to allow the Civil Revision Petition. The learned counsel for the plaintiff would rely upon the judgment of this Court reported in **2007-2-CTC-73 (S.Krishnan V. Rathinavel Naicker)**.

9. The learned counsel for the first respondent /proposed party would submit that she being the owner of the property and the petitioner/plaintiff, who is the alleged agreement holder, who is attempting to get the decree behind her back, she would submit that she is a necessary and proper party, therefore, the very order passed by the Court below is liable to be confirmed.

10. I have given my anxious consideration to the either side submissions.

11. The first and foremost submission of the learned counsel for the plaintiff is that, he being the *dominus litus*, and he being the agreement holder and that the proposed party did not object the



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possession, she had filed a suit only against the defendant. In this regard, the learned counsel would rely upon the judgment of this Court reported in **2007-2-CTC-73 (S.Krishnan V. Rathinavel Naicker)**. The relevant portion of the judgment is as follows-

“17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending suit or other proceeding, may be crystallized into the following categories:-

a) If without his presence no effective and complete 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 affect him adversely;

f) If his role is really that of a 'necessary witness' but is sought to be camouflaged as a 'necessary party';

If a party to a litigation satisfies the court that the person sought to be impleaded, passes any one or more of the above tests, then he is entitled to get the



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discretion of the court exercised in his favour. The above tests are not exhaustive and at times, even if a person falls under any one of the above categories, the court may refuse to implead him. To quote an example, a subsequent purchaser of a property, which forms the subject matter of the suit, may satisfy the tests (d) and (e) above mentioned and yet the court may decline to implead him on the basis of the doctrine of lis pendens. Therefore the above list is only a broad statement of the principles that could be culled out from judicial precedents.”

12. On perusal of the above judgment, it is very much apparent that the presence of the party become necessary, if their presence is essential for a complete and effectual adjudication of the dispute, though no relief is claimed against them. Admittedly, on the plain reading of the plaint pleading in paragraph No.8, there is a specific reference about the police complaint given by the proposed party during 2015. In such an event, the plaintiff now cannot come and say that the proposed parties are not the necessary and proper party. Though the plaintiff is the *dominus litus*, the same is no way give authority to them to ignore the necessary and proper party.



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13. Therefore, this Court is of the view that though the Court below while allowing the amendment application has not recorded any reason in its order, this Court could not find any infirmity in the final conclusion of the Court below. Therefore, this Court is of the firm view that the order of the Court below does not require any interference.

14. In the result, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to cost.

11.09.2023

NCC : Yes/No
Index : Yes/No
Ls



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C.KUMARAPPAN.,J.

Ls

To

- 1.The District Munsif,
Bodinayakanur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in

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