



C.R.P.(MD).No.1732 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1732 of 2019

and

C.M.P(MD) No.8898 of 2019

K.Tamilselvi

... Petitioner/Petitioner/Plaintiff

-vs-

Vellaiammal (Died)

1. A.Pathirakali
2. S.Anandan
3. G.Raja
4. Govindaraj

... Respondents 1 to 4/
Respondents 1 to 4
Defendants

5. The Commissioner,
Srivilliputtur Municipality,
Municipality Office,
Srivilliputtur – 626 125

... 5th Respondent/5th Respondent/
Proposed Party

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 09.01.2019 passed in I.A.No.665 of 2018 in O.S.No.19 of 2012 on the file of the Additional District Munsif, Srivilliputtur.



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For Petitioner : Mr.M.Ashok Kumar

For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.01.2019 passed in I.A.No.665 of 2018 in O.S.No.19 of 2012 on the file of the Additional District Munsif, Srivilliputtur.

2. The petitioner is the plaintiff and the respondents 1 to 4 are the defendants and the 5th respondent is the proposed party before the Court below.

3. There is no representation on behalf of the respondents 1 and 2. Despite the names of the respondents 3 to 5 are printed in the cause list, no one appeared on behalf of them.

4. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.



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5. The brief facts which give rise to the instant Civil Revision Petition are that the plaintiff has filed the suit for the relief of declaration and for injunction in respect of the 4th schedule property. The 4th schedule property is a passage situated in T.S.No.1086. The plaintiff while filing an application to implead the proposed party, namely, the Commissioner, Municipality Office, Srivilliputtur stated that the proposed party has sub-divided T.S.Nos.1086/1, 1086/2 and 1086/3 without giving any notice to the plaintiff. Therefore, in order to establish such factum, it is essential to implead the proposed party. However, the said application was resisted by the proposed party as well as the other defendants contending that the sub division took place only after giving notice.

6. After hearing both sides, the Court below has ultimately dismissed the application with the finding that in order to prove the factum of sub-division, whether it took place after giving notice or without giving notice, could be finalized by examining the 5th defendant witnesses before the Court below and therefore, the impleadment is not necessary and ultimately, dismissed the application. Aggrieved with the said order, the plaintiff is before this Court.



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7. The learned counsel for the petitioner/plaintiff would submit that, the proposed party without there being any notice, have sub-divided the property only to hoodwink the plaintiff. Therefore, unless the proposed party is brought on record as a party to the suit, he will not be in a position to secure the necessary document from the proposed party.

8. This Court is not in a position to agree with the submissions of the learned counsel for the petitioner. In order to implead the party to the suit, they should be as a necessary and proper party. From the perusal of the plaint pleadings, there is no prayer sought for against the proposed party. Furthermore, the very reason assigned by the petitioner for impleading the proposed party is only to secure the document in respect of the sub-division.

9. Therefore, as rightly submitted by the Court below, such exercise can be done by the plaintiff by summoning the official from the 5th respondent. Therefore, this Court could not find any infirmity in the order passed by the Court below.



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10. In the result, this Civil Revision Petition is **dismissed**. However, the dismissal of the Civil Revision Petition will in no way affect the petitioner for summoning the documents from the 5th respondent. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

13.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Additional District Munsif,
Srivilliputtur.



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C.KUMARAPPAN,J.

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