



CRP(MD).No.895 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2023

CORAM

THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(MD).No.895 of 2018 and
CMP(MD).No.3967 of 2018

Vijayabharathi

Petitioner

Vs.

1.Jeyakumar

2.The State of Tamil Nadu
rep. through its
District Collector,
Dindigul City,
Dindigul District.

3.The Tahsildar,
Office of the Tahsildar,
Palani Road,
Oddanchatram city,
Dindigul District.

4.Kallimandayam Firkka Kuruvatta Revenue Inspector,
Kallaimandayam Village,
Oddanchatram Taluk,
Dindigul District.

5.The Poosaripatti Village Administrative Officer,
Poosaripatti Village,
Oddanchatram Taluk,
Dindigul District.

Respondents



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PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 24.10.2017 passed in I.A.No.669 of 2015 in O.S.No.485 of 2015 on the file of the Sub Court, Palani.

For Petitioner : Mr.M.P.Senthil

For Respondents 2 & 3 : Mr.M.Senthil Ayyanar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 24.10.2017 passed in I.A.No.669 of 2015 in O.S.No. 485 of 2015, on the file of the Sub Court, Palani.

2. The revision petitioner herein, is the plaintiff before the trial Court. He filed a suit for the relief of declaration declaring that Na.Ka.No.3774/2015/E3, dated 10.06.2015 is null and void and also for the relief of permanent injunction.

3. For the sake of convenience, the parties will be referred



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according to the litigative status before the Trial Court.

4. When the suit is pending, one, third party viz., Jeyakumar, who is the first respondent herein and the elected Ward Member of Poosaripatti Village has filed an application for impleading himself as a party defendant to the suit. He contended that the first respondent / plaintiff being an influential person is attempting to encroach upon the common passage which has been used by the people belonging to that village for time immemorial. He would further averred that the residence of said village has complained to the petitioner in respect of such encroachment, and that having knew the facts of the said issue, he filed an application to implead himself as 5th defendant in the suit.

5. However, the revision petitioner herein / first respondent / plaintiff objected the petition on the ground that the petitioner did not have any *locus standi*, and the issue is not at all a Public Interest Litigation. It is the submission of the revision petitioner that the allegation made by the proposed third party is in respect of the existence of a common passage and the long usage of the same by villagers. However, the learned Trial Judge, after considering the submissions made by the learned counsel appearing on either side, has allowed the application on



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the finding that the petitioner being the Ward Member and also knew the facts of case, he became necessary party.

6. Aggrieved with the said order of the learned Trial Judge, the revision petitioner / plaintiff has filed the present revision.

7. The learned counsel appearing for the revision petitioner would submit that the said order has been passed over looking the settled principles of law, and the plaintiff being the *dominus litus*, he can choose the person against whom he needs relief. And in this case, the District Collector, the Thasildar and the other Government Officials were arrayed as defendants. Therefore, contended that the order passed by the learned trial Judge is liable to be interfered with.

8. The learned Government Advocate appearing for the respondents 2 and 3 would submit that the order of the trial Court is no way could cause any prejudice to the petitioner.

9. Heard the learned counsel appearing on either side and perused the materials available on record.



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10. This Court has perused the Na.Ka.No.3274/2015/E3, dated 10.06.2015, which is annexed in the typed set. Wherein, the Thasildar of the Ottanchathiram Taluk has issued the proceedings directing the revision petitioner / plaintiff to remove the encroachment made in SF.No.335/2. The only ground urged by the proposed party is that, since he being the ward member and that he knew the facts of the case, he becomes necessary party herein. No doubt, unless the party is necessary and proper party, no one can have any say over the suit property. It is settled principle of law that the necessary party is a party in whose absence no decree could be passed.

11. Admittedly, even according to his petition, he has not been affected personally with the alleged encroachment of the plaintiff. However, according to him some of the residents of the said village have been affected and he being the Ward Member, he has received a complaint from the villagers. Admittedly, the impugned notice was issued by the existing defendant who are the official defendants. Therefore, the proposed party cannot be construed as a proper and necessary party. Furthermore, when the District Collector, the Thasildar and Block



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Development Officer as well as Village Administrative Officer have already been made as parties, the proposed defendant could not even be construed as a person comes under the definition of the proper party.

12. At this juncture, the learned counsel appearing for the petitioner would submit that the plaintiff being the *domius litus* she has got every right to choose the defendant against whom the relief needs. In this case, since notice has been issued by the Thasildar, she has rightly impleaded the Government Officials such as Collector, Thasildar and Block Development Officers. As such it is appeared that the petitioner has no *locus standi* to implead himself as party in the present suit.

13. Therefore, this Court is of the view that the order of learned trial Judge is not in consonance with the settled principals of law and liable to be interfered with. Therefore, this Court is inclined to allow this revision petition.

14. In the result, this Civil Revision Petition is allowed and thereby, the fair and decreetal order of the Court below passed in I.A.No. 669 of 2015 in O.S.No.485 of 2015, is ordered to be set aside. No costs.



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Consequently, the connected Miscellaneous Petition is closed.

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15. Considering the long pendency of the suit, the trial Court is directed to dispose of the suit as expeditiously as possible, preferably with a period of six months from the date of receipt of a copy of this order.

16. At this juncture, learned counsel appearing for the revision petitioner would submit that though the order was passed by the Subordinate Judge, Palani, now, after bifurcation and constitution of new Sub-Court at Ottanchathiram, the suit in O.S.No.15 of 2015 has been transferred to the Sub-Court, Ottanchthiram and the same has been re-numbered as O.S.No.211 of 2022. Hence, Registry is directed to mark a copy of this order to the Sub Court, Ottanchatiram.

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Index : Yes / No
Internet : Yes / No
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C.KUMARAPPAN, J.,

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