



C.R.P.(MD)No.3153 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 04.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3153 of 2023
and
C.M.P.(MD)No.16190 of 2023

Muthurakku : Petitioner/Petitioner/Appellant

Vs.

1.Manimekalai

2.S.Palaniappan : Respondents/Respondents/
Respondent

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to reverse and set aside the order dated 17.10.2019 in I.A.No.39 of 2018 in A.S.No.25 of 2017 on the file of the Court of the Principal District Judge, Sivagangai.

For Petitioner : Mr.S.Muniappan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.39 of 2018 in A.S.No.25 of 2017, dated 17.10.2019 on the file of



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the Court of the Principal District Judge, Sivagangai, dismissing the petition filed under Order I Rule 10(2) of C.P.C, to implead the third respondent in the appeal.

2. The revision petitioner/plaintiff has filed the above suit in O.S.No.74 of 2007 claiming damages for damaging the eastern side wall of the suit property and mandatory injunction directing the defendants to remove the damaged wall and put up a new wall therein at the cost of the defendants. Pending suit, the revision petitioner has filed an application for impleading the proposed party alleging that he sold the properties during the pendency of the suit. The learned trial Judge, after enquiry, has passed an order dismissing the petition. Challenging the same, the revision petitioner has preferred the revision in C.R.P.(MD)No.2028 of 2016. Since the suit was disposed of, the Civil Revision Petition was also dismissed as infructuous.

3. Aggrieved by the judgment and decree passed in the suit, the revision petitioner has preferred an appeal in A.S.No.25 of 2017 and the same is pending on the file of the Principal District Court, Sivagangai.



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Pending appeal, the revision petitioner has again filed the application under Order 1 Rule 10(2) C.P.C., to implead the proposed party.

4. The only contention of the revision petitioner is that the proposed party is the present owner of the property as she has purchased the property during the pendency of the suit and that therefore, for enforcement of the decree to be obtained, she is a necessary party.

5. Admittedly, the revision petitioner has claimed damages and also mandatory injunction against the defendants 1 and 2, against whom cause of action was alleged and the prayers are claimed. Even assuming for arguments sake that if the Appellate Court has decreed the suit as claimed by the plaintiff, that cannot be enforced or executed against the present third party and the same has to be executed only against the defendants.

6. The learned Principal District Judge by relying on the judgment of the Hon'ble Supreme Court in *Satyadhyan Ghosal And Others vs . Deorajin Debi and others* reported in *AIR 1960 SCC 941*, has held that in view of the decision of the trial Court in I.A.No.528 of 2015 and the



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dismissal of the revision by this Court, the appellant is barred by the principle of *res judicata*.

7. As rightly observed by the learned appellate Judge, the reliefs sought for, are not in any way connected to the property of the defendants 1 and 2, which has now come to be owned by the proposed party and as such, the proposed party is not a necessary party, whose presence is not necessary for deciding the issues raised in the appeal.

8. Considering the facts and circumstances of the case, the impugned order dismissing the impleading petition cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The Principal District Judge,
Sivagangai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

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Dated : 04.12.2023