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C.R.P.No.1205 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1205 of 2024

and

C.M.P.No.6234 of 2024

1.Mariam Bibi

2.Jameela

3.Anarkali

4.Usean Bi Bi

..Petitioners

Vs.

1.Shahjahan

2.Abdul Majid

3.Shamsuddin

4.Babu

5.Mohammad Ali

Noor Mohammad (Died)

6.Yesodha

7.Elumalai

8.Babu

9.Rajesh

10.Nemi Chand Sowcar



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11.D.Vijayakumar

12.G.Kumar

13.Sohanlal

14.Alimaa

15.Maalika

16.Farida Babu

17.Durai

18.Perumaal Saamy

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 03.11.2023 made in I.A.No.6 of 2023 in O.S.No.91 of 2007 in so far as dismissing the I.A.No.6 of 2023 in respect of para No.3 to para 6 set out in the application to amend the plaint on the file of the District Munsif at Chengalpattu.

For Petitioners : Ms.Nuzhath Khanam

For Respondent 1 to 4 : Mr.Bharath Kumar

for Mr.V.Nicholas for R1 to R3



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ORDER

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This Civil Revision Petition arises against the order passed by the learned District Munsif, Chengalpattu in I.A.No.6 of 2023 in O.S.No.91 of 2007 dated 03.11.2023.

2. O.S.No.91 of 2007 is the suit presented for several reliefs including declaration that the transactions that have taken place between the 1st and 2nd defendants with respect of item No.1 of the suit property as Benami. Similar reliefs have been sought for other items in the suit also.

3. Pending suit, as the property had been alienated in favour of several parties, an application was filed to implead the purchasers as defendants to the suit. This application filed under Order I Rule 10(2) of the Code of Civil Procedure came to be allowed as against the defendants 15 to 19 on 11.07.2023. On the same day the 20th defendant was also impleaded as a party. The plaintiff, in order to bring them on record, filed an application in I.A.No.6 of 2023. The said application came to be dismissed. Hence, the revision.



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4. Heard Ms.M.Nuzhath Khanam, learned counsel for the civil revision petitioners and Mr.Bharath Kumar, learned counsel for the respondents 1 to 3. The other respondents have been served, but they have not entered appearance.

5. Ms.M.Nuzhath Khanam, learned counsel for the civil revision petitioners will argue that I.A.No.6 of 2023 is consequent to the relief granted in I.A.No.4 of 2023 and I.A.No.5 of 2023 and therefore the Court ought not to have dismissed the said petition.

6. This would be stoutly resisted by Mr.Bharath Kumar, learned counsel for the respondents 1 to 3 stating that while impleading applications have been allowed, no permission was granted by the Court for the purpose of adding averments as against the proposed parties. Hence, he would plead that the revision requires an order of dismissal.

7. I have carefully considered the arguments of both sides. The proper procedure to be followed when a party is added as a party to the suit by virtue of Order I Rule 10 of the Code of Civil Procedure is to file



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an application for carrying out consequential amendments to show the newly impleaded party as the party to the suit. Instead of doing so, the plaintiffs have proceeded to role into one application not only impleading the parties, but, also making averments as against them. Such a procedure is impermissible.

8. However, the dismissal of application in its entirety cannot be sustained. I.A.No.6 of 2023 is consequent to the order passed in I.A.No.4 of 2023 and I.A.No.5 of 2023. By virtue of these orders defendants 15 to 20 have been impleaded as parties to the suit. Though the petitioners have sought for higher relief, the Court should have allowed the application only in so far as it seeks to implead the defendants 15 to 20 and should have left it open to the plaintiffs to file a proper application under Order VI Rule 17 of the Code of Civil Procedure to make the averments as against the newly impleaded defendants. The party may seek for higher relief that does not mean that the petition should be dismissed in entirety.



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9. Taking over all circumstances into consideration, I.A.No.6 of 2023 is allowed in part. The Court shall permit the plaintiffs to amend the plaint and file amended plaint copy with respect to impleading of defendants 15 to 20 alone. Liberty is granted to the petitioners/ plaintiffs to file an application under Order VI Rule 17 of the Code to incorporate the amendments that would be made in the plaint consequent to impleading of such persons.

10. With the above liberty, this Civil Revision Petition is allowed in part. I.A.No.6 of 2023 shall stand allowed only insofar as impleading of defendants 15 to 20 is concerned. No costs. Consequently, the connected miscellaneous petition is closed.

05.09.2024

dsa
Index : Yes/No
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Speaking order / Non-Speaking order



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To

The District Munsif,
Chengalpattu.



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V.LAKSHMINARAYANAN,J.

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