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C.R.P. No. 948 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 948 of 2022
and
C.M.P. No. 4866 of 2022

R.Karuppasamy (Deceased)

1. R.Subramani

2. R.Murugesan

3. R.Chinnasamy ... Petitioners / Respondents / Plaintiffs

4. M.Saraswathi

5. Srinivasan

6. Gomathi ... Petitioners / Respondents /
1st Plaintiff Legal heir

Vs.

1. N.Angammal

2. N.Palanisamy

3. N.Shanmugham

4. N.Avanashiappa

5. N.Ramasamy



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6. P.Bhoopathy

7. K.Subramanian

8. M.Sankarasamy

... Respondents / Respondents / Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order and decretal order dated 15.02.2022 passed in I.A. No. 466 of 2021 in O.S. No. 289 of 2015 on the file of the Additional Subordinate Judge, Tirupur.

For Petitioners : M/s. Avinash Wadhwani
for M/s. V.Srimathi

For R1 to R5 : M/s. N.Somasundaar

For R6 to R8 : M/s. V.Nicholas

ORDER

This Civil Revision Petition has been preferred as against the order dated 15.02.2022 passed in I.A. No. 466 of 2021 in O.S. No. 289 of 2015 on the file of the Additional Subordinate Judge, Tirupur, wherein, the 1st to 5th respondents herein have filed petition before the Trial Court to implead them as 4th to 8th defendants in the main suit and the same was allowed. Against which, the present Civil Revision Petition is filed.



2. The petitioners are the plaintiffs in the main suit and they filed main suit as against the 6th to 8th defendants for the relief of permanent injunction.

While pending suit, the 1st to 5th respondents have filed this application to implead them as parties to the suit and the same was allowed.

3. The learned counsel appearing for the petitioners would contend that they are the plaintiffs in the main suit and they filed suit for the relief of permanent injunction as against the 6th to 8th respondents herein, since they attempted to interfere with the petitioners' peaceful possession and enjoyment of the suit property. While pending suit, the 1st to 5th respondents filed an application to implead them as parties in the suit and the Trial Court allowed this application. The 1st to 5th respondents are no way connected to the suit property and there is no cause of action as against them and the petitioners being the plaintiffs are the dominus litis and thereby, they have to choose against whom the suit has to be filed. Since the 6th to 8th respondents attempted to interfere with the petitioners' possession and enjoyment of suit property, they filed suit. There is no cause of action as against these 1st to 5th respondents but the Trial Court, without considering the same, allowed the petition by holding that the property of the 1st to 5th respondents also involved in this case and thereby, they are necessary parties to the suit.



Therefore, the above said observation of the Trial Court is unsustainable.

Therefore, the order passed by the Trial Court is liable to be set aside.

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4. The learned counsel appearing for the 1st to 5th respondents would contend that the petitioners have filed suit in S.F. No. 216/1 for an extent of 4.76 acres but they have no right over the property for the entire extent and they only have right for an extent of 3.82 acres through sale deed dated 07.06.1957. The 1st to 5th respondents are entitled to 2/3 share in 0.25 cents in S.F. No. 216/1, by suppressing the facts, they filed suit for the relief of permanent injunction as against the 6th to 8th respondents. Therefore, their right has to be protected and thereby, they are also proper and necessary parties to the suit. The Trial Court, after considering that the petitioners are having right over the property, correctly allowed the petition and impleaded the 1st to 5th respondents as defendants. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed.

5. This Court heard both sides and perused the materials available on record.



6. In this case, the petitioners herein have filed suit before the Trial Court for the relief of permanent injunction as against the 6th to 8th respondents herein. While pending suit, the 1st to 5th respondents filed an application before the Trial Court for impleading them as proper and necessary parties. According to the respondents, they are also having some right over the suit property and the entire suit property is not belong to the petitioners and the 1st to 5th respondents are having 2/3 share for an extent of 0.25 cents in the suit property. Therefore, they are also proper and necessary parties. Though, the respondents have pleaded that they have right over the property for an extent of 0.25 cents, the suit is only filed for the relief of permanent injunction and not for declaration and the plaintiffs being the dominant litis, they have to choose against whom the suit has to be filed. The respondents cannot, as a matter of right, implead them as parties unless they are proper and necessary properties to adjudicate the matter. Since the suit is only filed for permanent injunction, the Court has to see possession of petitioners and the title of the property cannot be decided by the Trial Court unless there is a cloud over the title of the property. Since the case is filed only for the relief of permanent injunction, the 1st to 5th respondents cannot be said as proper and necessary parties. Therefore, the Trial Court, without considering the same, allowed the petition.



7. The learned counsel appearing for the respondents would contend that since they are having share over the suit property, their right have to be protected. It is pertinent to note that the suit is only for permanent injunction, if any dispute in respect of the title of the property, the 1st to 5th respondents can establish the title over the property through separate proceedings. Moreover, it is admitted by both parties that already the same petitioners filed another suit for the relief of declaration as against these 1st and 5th respondents and others. Therefore, there is no any prejudice would be caused to the 1st to 5th respondents in respect of their rights. Further before the District Court petition was filed to transfer the case for Joint Trial and the same was allowed. Therefore, the rights of the petitioners can be decided in the later suit filed for declaration of title. In this case, there is no cause of action as against proposed parties and thereby the cannot be impleaded on their application. Even assuming that the petitioners have filed suit for larger extent by including the respondent's property, it is for the Trial Court to decide as to whether the petitioners produced documents for the entire suit properties to establish their right and to get permanent injunction. Only because the petitioners filed suit for 4.76 acres the Court cannot decide the case without documents for entire extent of suit property. Moreover, without impleading the respondents if any decree is obtained that decree cannot bind the respondents.



8. At this juncture, the learned counsel appearing for the petitioner has relied on the judgment in *Manachari -vs- State* reported in **2014 SCC OnLine Kar 8102** on the file of the High Court of Karnataka. On a careful perusal of the judgment, it is clear that any injunction granted against third party will be binding between the parties to the suit and as such, a judgment will not be a judgment in rem. In the case on hand also, the petitioners have filed suit for permanent injunction as against the 6th to 8th respondents and if any decree passed only binding upon them and not binding others.

9. The learned counsel appearing for the respondents has relied on the judgments in *Pankajbhai Rameshbhai Zalavadia -vs- Jethabhai Kalabhai Zalavadia (Deceased) through Lrs and Ors.* reported in **AIR 2018 Supreme Court 490**, *R.Dhanasundari -vs- N.Umakanth and Ors.* reported in **2020 (2) MWN (Civil) 490 (Supreme Court)**, *Devaki Thiyagarajan -vs- Ahamed & 8 others.* reported in **2015(4) CTC 293 (DB)**, *P.R.Nallappa -vs- P.K.Srinivas & Ors.* reported in **2003 (3) MLJ 711**, *S.Krishnan -vs- Rathinavel Naicker & 22 Ors.* reported in **2007 (2) CTC 73**, *Suguma Poultry Farm Ltd -vs- Arul Mariamman Textiles Ltd.* reported in **2004 (4) CTC 197**, *Kousalya Education Trust -vs- K.Vijayakumari & Ors.* reported in **2003 (4) CTC 38**,



E.Vanaroja & 2 others -vs- S.K.Krishnan & 16 Ors. reported in **2011 (2)**

MWN (Civil) 274, P.N.Krishnan -vs- R.Shanmugaraj & Ors. reported in **2013 (1) MWN (Civil) 689** and ***Thangaraj -vs- Karuppannan*** reported in **2012 (7) MLJ 675**. On a careful perusal of the judgments, it is clear that necessary party means a person whose presence would enable the court to completely, effectively and adequately adjudicate the matter in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiffs/dominus litis. In the case on hand also, since the suit is filed only for the relief of permanent injunction, the title of the property cannot be decided and the 1st to 5th defendants are neither necessary nor proper parties to the suit. Therefore, the aforesaid judgments will not be applicable to the present facts of the case, even as per the judgment submitted by the learned counsel for the respondents in ***E.Vanaroja & 2 others -vs- S.K.Krishnan & 16 Ors.*** reported in **2011 (2) MWN (Civil) 274**, if a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him against the wishes of the plaintiff, the 'dominus litis'.

10. In view of the aforesaid discussions, this Court is of the opinion that



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the 1st to 5th respondents are not proper and necessary parties and their presence is not required to decide the case and the plaintiffs being the 'dominus litis' have to choose against whom the case has to be filed but the Trial Court, without considering the above aspects, allowed the application. Therefore, the order dated 15.02.2022 in I.A. No. 466 of 2021 in O.S. No. 289 of 2015 passed by the Additional Subordinate Judge, Tirupur is unsustainable and the same is liable to be set aside.

11. In the result, this Civil Revision Petition is allowed and the order passed in I.A. No. 466 of 2021 in O.S. No. 289 of 2015 is set aside and the petition to implead the proposed parties is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The Additional Subordinate Judge, Tirupur.



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P.DHANABAL, J.,

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