



C.R.P.No.2340 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2340 of 2024
and
C.M.P. No.12296 of 2024

P.Kanchana

... Petitioner

Vs.

1.A.Viswambaram
2.V.S.Saji
3.Valliammal
4.Karthik
5.Manivasagam
6.Raja

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order, dated 15.03.2024 made in I.A.No.6 of 2023 in O.S.No.289 of 2018 by the learned III Additional District and Sessions Judge, Poonamallee.

For Petitioner : Ms.M.Sankari

For R1 : Mr.R.Mubarak Bhasha



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ORDER

Challenging the fair and decreetal order, dated 15.03.2024 passed in I.A.No.6 of 2023 in O.S.No.289 of 2018 by the learned III Additional District and Sessions Judge, Poonamallee, the petitioner is before this Court with the present Revision.

2. Ms.M.Sankari, the learned counsel appearing for the petitioner would submit that the petitioner is the daughter of 1st defendant; Aunty of 2nd defendant; Sister of deceased elder brother/3rd defendant and brother/4th defendant. The petitioner is one of the owners of the property having an extent of 1404 Sq.ft., as per the family settlement arranged in the year 1995. From 1977, the family of the petitioner is in possession and enjoyment of the suit property without any encumbrance. The father of the petitioner passed away on 26.12.1995 and after his death, the petitioner and the other family members are in possession and enjoyment of the suit property. The petitioner and her family members obtained electricity service connection for the suit property. A superstructure of a temple namely “Shree Devi Karumaari Amman” was put up in the suit property. The documents are forged by the plaintiffs to grab the



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property. A Suit was filed by the petitioner in O.S.No.209 of 2002 before the District Munsif Court, Ambattur, for permanent injunction and an interim order has been granted in favour of the petitioner. The petitioner and her family members are in continuous possession and enjoyment of the suit property. Though the petitioner applied for patta, her application is still pending with the Revenue Authorities. Hence, the petitioner filed an application in I.A.No.6 of 2023 in O.S.No.289 of 2018 on the file of learned III Additional District and Sessions Judge, Poonamallee, to implead her as proposed 5th defendant in the Suit and the trial Court dismissed the same by holding that the petitioner is not necessary party, is exfacie untenable.

3. The learned counsel further submitted that the trial Court erred in dismissing the petitioner's prayer to seek impleadment in the suit filed by the respondents 1 to 2 / plaintiffs, thereby, denying the opportunity to the petitioner to contest the fraudulent claims of respondents 1 and 2. Further, the trial Court failed to note that the suit property is a Government property, which are road margin lands appurtenant to the petitioner's property and therefore, the petitioner has got lawful right to ensure that its boundaries not blocked by illegal encroachers such as respondents 1 and 2 by making false



claims in the suit. Hence, to deny the petitioner's right to get impleaded and contest the Suit is against the principles of equity and such an erroneous finding that the petitioner is not a necessary party, deserves to be set aside. Hence, the petitioner is before this Court with the aforesaid relief.

4. Mr.R.Mubarak Bhasha, the learned counsel appearing for the respondent would submit that the petitioner, who is the daughter of the 3rd respondent, has no independent right in any manner to become a necessary party in the suit. The petitioner and the 3rd respondent, who is the first defendant in the suit and the mother of the former, are residing in the same address from the year 1989. The contentions that the petitioner and her family members obtained EB connection, Gas connection, Bank Pass Book, School Certificates and Aadhar Card in connection with the suit schedule property are utter falsehood. None of the document relates to the suit property or its survey number, but only relates to Door No.25, Maya Street, Ambattur, which admittedly situated on the Government Poramboke land at Survey No.647. In the earlier litigations, the petitioner was not added as party. Hence, the present petition is only to drag on the proceedings in the suit. The relief sought for in the Suit is only in



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respect of vacant land in Plot No.11-A, Maya 6th Street, Ambattur, Chennai. Being so, the entire contention of the petitioner revolves around Door No.25, Maya Street, Ambattur, which is absolutely irrelevant and immaterial for the purpose of adjudication in the suit. The alleged unregistered family settlement in the year 1993 is a fabricated and forged document, having no validity in the eye of law. Even the alleged executant of the document, Munusamy, does not possess title or interest over the suit property at any point of time. The first defendant has never mentioned about the existence of the document in her pleadings. Either the petitioner or her predecessor has never been in ownership or enjoyment of the suit property at any point of time. The documents mentioned by the petitioner do not relate to the suit property and they relate to some other property. The conduct of the petitioner in filing the petition would show that the entire family of the first defendant are in collusion with each other. The petition has been filed only when the main case was posted for arguments. If the petition is allowed, it will cause much hardship and it will result in abuse of the process of Court. The learned counsel, in support of his contentions, has relied on the Judgment of this Court in ***R.Kamalesan @ another Vs. Pushpagam & Others*** reported in ***(2017-4-L.W.345)***, and an yet another



decision of this Court in ***E.Vanaroja & others Vs. S.K.Krishnan & Others*** reported in ***2011-2-L.W.921*** wherein it has been held that 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. Hence, the learned counsel prays for dismissal of the Revision.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. On perusal of the records it is seen that the Suit in O.S.No.289 of 2018 has been filed by the respondents 1 and 2, against the respondents 3 to 6, for declaration, recovery of possession and for mandatory injunction, directing the defendants to demolish the superstructure in the suit property, directing the defendants to pay damages and for the relief of permanent injunction restraining the defendants from dealing with the suit property. It is seen that on 05.10.2023, when the case posted for hearing before the trial Court, the petitioner, who is the daughter of the 3rd respondent, filed an application in I.A.No.6 of 2023 in O.S.No.289 of 2018, before the learned III Additional District and Sessions Judge, Poonamallee, to



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implead her as 5th defendant in the suit. The trial Court dismissed the application filed by the petitioner on the ground that the petitioner is not at all a necessary party. Hence, the petitioner filed the present Revision.

7. Further, it is seen from the records that the Suit is of the year 2018, and that the petitioner's mother is already a party to the suit and there was a gross delay of more than 5 years in filing an application for impleadment by the petitioner, despite having knowledge about the suit proceedings and that there was no sufficient reason assigned as to why such a gross delay. Though the petitioner in support of her claim has exhibited few documents to show that she is in possession and enjoyment of the suit property, none of the document relates to the suit property or its survey number, but those documents relate to Door No.25, Maya Street, Ambattur, which admittedly situated on the Government Poramboke land at Survey No.647. Further, in the earlier litigations, the petitioner was not added as party. The relief sought for in the Suit is only in respect of vacant land in Plot No.11-A, Maya 6th Street, Ambattur, Chennai. When that being so, the entire contention of the petitioner revolves around Door No.25, Maya Street, Ambattur, which is absolutely



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irrelevant and immaterial for the purpose of adjudication in the suit.

In the considered view of this Court, the present petition is filed only to drag on the proceedings.

8. In view of the foregoing discussions, this Court is of the opinion that the petitioner is not a proper and necessary party and her 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. The Trial Court, considering the above aspects, has rightly dismissed the application filed by the petitioner and I see no reason to interfere in the well reasoned findings of the Court below.

9. In the result, the Civil Revision Petition stands dismissed by confirming the fair and decreetal order passed in I.A.No.6 of 2023 in O.S.No.289 of 2018, dated 15.03.2024, by the learned III Additional District and Sessions Judge, Poonamallee. No costs. Consequently, the connected miscellaneous petition is also dismissed.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
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To

The III Additional District and Sessions Judge,
Poonamallee.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER
IN
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