



CRP(MD).No.447 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 30.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.447 of 2022
and C.M.P(MD).No.1955 of 2022**

Savithiri

... Petitioner

-Vs-

1.Gurusamy
2.Nilavalagan
3.Palanisamy(died)
4.Rakku
5.Eswari

(Memo dated 10.11.2023 in USR No.39153 is recorded, to the effect that R3 died, and respondents 4 and 5 are brought on record as LR's of the deceased third respondent vide Court order dated 15.07.2024 made in CRP(MD).No.447 of 2022 by DBCJ)

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and executable order dated 08.11.2021 passed in the application in I.A.No.261 of 2021 in O.S.No.105 of 2016 on the file of the District Munsif Court, Ramanathapuram.



CRP(MD).No.447 of 2022

For Petitioner : M/s.Sakthi Bavatharani
For Respondents : No appearance (for R1 & R2)
R3 died
Mr.K.SAthiyasingh (for R4 & R5)

ORDER

The civil revision petition is filed against an order dated 08.11.2021 made in I.A.No.261 of 2021 in O.S.No.105 of 2016.

2. By the said order, the Interlocutory Application is allowed by the trial Court. The prayer in the Interlocutory Application is to permit the petitioner/third party to be impleaded as the third defendant in the suit. A perusal of the material records of the case, it can be seen that one Savithiri is the plaintiff in O.S.No.105 of 2016. She has filed a suit for bare injunction against the two defendants, who are none else than her brothers, namely Gurusami and Nilavalagan. It is the claim of Savithitri that the suit property in Survey No.215/ 2 originally belonged to her mother. Her mother had executed a settlement deed in her favour. When yet another brother, namely one Murugan, filed an earlier suit for partition, in the said suit, the plaintiff Savithiri as well as the defendants Gurusamy and Nilavalagan contested the said suit on the same line that the property in



CRP(MD).No.447 of 2022

WEB COPY

Survey No.215/ 2 belongs to the mother and the mother executed the settlement deed in favour of Savithiri during her lifetime and pursuant that to, Savithiri is only in possession. The said fact was accepted in the earlier round of litigation. Therefore, Savithiri claims that she is the absolute owner of the property and subsequently, the defendants one and two are trying to set up as if there is some subsequent settlement deed executed by Savithiri and therefore, she claims for a bare injunction.

3. The suit is resisted by the defendants one and two by filing separate written statement. In the written statement, it is the consistent case of both the defendants that it is true that originally the property belonged to their mother. But, however, not the entire extent, only a part extent of 61 cents was settled in favour of the plaintiff Savithiri. The remaining extent, which being enjoyed in common and by a subsequent relinquishment deed dated 02.07.2008, Savithiri and the other sister released their rights in favour of the defendants one and two and therefore, she cannot claim any right in respect of that part of the property and without divulging about the said relinquishment deed, asking for relief in respect of the entire property is unsustainable and the defendants state that



CRP(MD).No.447 of 2022

in respect of the portion of the property, which is settled on the plaintiff Savithiri, they do not intend to interfere with her possession in any manner.

4. In the said case, now the respondent herein/ third party, has filed an application for impleading. It is the case of the petitioner as per the impleading application that he has also purchased a property. The pathway to the said property is there in Survey No.215 /2. As a matter of fact, it has been subdivided as Survey No.215/ 2A1 and the same is a common pathway and the proposed party is entitled to easementary right and he has right to use the said pathway. As a matter of fact, the respondent/ third party, namely, Palanisamy has also filed a separate suit in O.S.No.18 of 2021 on the file of the District Munsif Court, Ramanathapuram for the relief for permanent injunction, which is also against the plaintiff/ Savithiri as well as the defendants and the same is pending. Therefore, he submits that he is a necessary and proper party to the present suit. The application was resisted by the plaintiff. The trial Court, after considering the case of the parties, allowed the application, as against which, this civil revision petition is filed.



CRP(MD).No.447 of 2022

WEB COPY

5. M/s.Sakthibavatharani, learned counsel appearing on behalf of the petitioner would submit that when the respondent/ third party has already filed a suit claiming the easementary right, the same is not a matter of *lis* as far as the instant suit is concerned and as such, the trial Court ought to have seen that the proposed party is not a necessary party to the suit.

6. Per Contra, the learned counsel for the respondent/ third party would submit that the entire suit is filed by suppressing the relinquishment deed dated 02.07.2008. Citing the pendency of the suit, when the petitioner try to fill up the pits in the pathway, the plaintiff interfered and therefore, the application for impleading is filed. The proposed party has rights in respect of the Survey No.215/ 2A1, which is a common pathway. Even he has rights in Survey Nos.215 /2 and 215/1 also. Therefore, the respondent/ third party is a necessary and proper party to suit.

7. I have considered the rival submissions made on either side and perused the materials available on record.



CRP(MD).No.447 of 2022

WEB COPY

8. As far as the suit in O.S.No.105 of 2016, the same is a *lis* between the sister and her brothers. The question to be decided in the said suit is that whether Savithiri/ plaintiff is entitled for the entire acre of 1.32 cents or she is only entitled for a part of the property upon being settled by her mother, and whether or not she has executed a relinquishment deed in respect of the remaining portion of the property and whether the suit is bad for suppression of material facts. The same does not in any manner relate to the refusal of easementary right or pathway, which the proposed party is said to have been using. The right to use the common pathway or the right of easementary right is the right of the proposed party, which he has rightly claimed by way of filing of a separate suit. The decree in the instant suit will not in any manner come in the way of the petitioner / proposed party establishing independently of the right of the common pathway/ easementary right in respect of any of the survey numbers relating to the parties. Therefore, with reference to the relief prayed for in the suit and the right asserted as between the parties to the *lis*, I do not see that the proposed party, namely, Palanisamy, is necessary or proper party to the suit. Accordingly, when the plaintiff being the *dominus litus* has impleaded only Gurusamy and Nilavalagan and filed a suit for bare



CRP(MD).No.447 of 2022

WEB COPY

injunction restraining them from interfering with her possession of the property. The respondent/ third party cannot as a matter of right implead in the said suit, unless he is materially affected by the relief prayed for in the said suit. When the respondent/ third party has filed a separate suit, leaving open for the respondent/ third party to raise all contentions in the suit filed by him, I am inclined to interfere with the order dated 08.11.2021 passed in I.A.No.261 of 2021 in O.S.No.105 of 2016.

9. In the result, the Civil Revision Petition stands allowed and I.A.No.261 of 2021 in O.S.No.105 of 2016 stands dismissed, however, with liberty to the respondent proposed party as observed above. No costs. Consequently, connected Miscellaneous Petition is closed.

10. As far as the immediate difficulty expressed by the respondent/ proposed party is concerned, it is for the proposed party to move such application for interim relief in the pending suit filed by him.

30.07.2024

(1/2)

NCC: Yes/No

Index : Yes / No



WEB COPY



CRP(MD).No.447 of 2022

D.BHARATHA CHAKRAVARTHY, J.

Rmk

To
1.The District Munsif, Ramanathapuram.

**C.R.P(MD)No.447 of 2022
and C.M.P(MD).No.1955 of 2022**

30.07.2024
(1/2)