



C.R.P(MD)Nos.706 & 707 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P(MD)Nos.706 & 707 of 2021
and
C.M.P(MD)Nos.3848 & 3849 of 2021

C.R.P(MD)No.706 of 2021:

M.Manoharan

... Petitioner/1st Respondent/
Defendant

Vs.

1.S.Chellamani

... 1st Respondent/Petitioner/
Plaintiff

2.V.Somasundaram

3.Srinivasan

4.Chandra Balan

... Respondents 2-4/
Proposed Respondents 2-4/
Third Parties

5.Suresh Babu

6.Krishnan

7.Viswas Promoters Private Limited,
Through its Director,
S.Padmalakshmi.



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8.R.Kannan

... Respondents 5 to 8/
Proposed Respondents 5 to 8/
Third Parties

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order, dated 12.07.2019 made in I.A.No.84 of 2017 in O.S.No.129 of 2011 on the file of the learned Principal District Judge, Madurai, set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.R.Devaraj
For R-1 : Mr.G.Aravinthan
For R-2 to R-6
& R-8 : No appearance
For R-7 : Mr.S.Parthasarathy

C.R.P(MD)No.707 of 2021:

M.Manoharan

... Petitioner/1st Respondent/
Defendant

Vs.

S.Chellamani

... 1st Respondent/Petitioner/
Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order, dated 12.07.2019 made in I.A.No.83 of 2017 in O.S.No.129 of 2011 on the file of the learned Principal District Judge, Madurai, set aside the same and allow this Civil Revision Petition.



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For Petitioner : Mr.R.Devaraj

For Respondent : Mr.G.Aravinthan

COMMON ORDER

The first respondent / plaintiff filed O.S.No.129 of 2011 for framing a scheme for administration of the trust properties mentioned in Schedule 'A' of the plaint for performing the trust *Dharmas* mentioned in Schedule 'B' of the suit. In the said suit, the petitioner herein alone was impleaded as defendant originally. The trial in the said suit has commenced and plaintiff has already adduced evidence on his side and on the defendant side, D.W.1 was already examined. At that stage, the first respondent herein filed two applications, namely, I.A.Nos.83 and 84 of 2017 seeking to implead the respondents 2 to 8 herein as defendants in the main suit and to amend the suit schedule properties by adding the properties as mentioned in the petition in I.A.No.84 of 2017 under Order 1, Rule 10 and Order 6, Rule 17 of CPC respectively. In the affidavit filed in support of the application filed under Section Order 6, Rule 17 of CPC, the first respondent has stated that due to oversight, the respondent failed to include certain properties at the time of filing of the suit. The respondents 2 to 8 herein were sought to be impleaded as defendants 2 to 8 in



the main suit are stated to be the purchasers of the properties that are sought to be added to the plaint. Admittedly, the said properties were sold by the petitioner herein as early as in the year 2006 and at any rate, much prior to filing of the said suit.

2. It is not the case of the first respondent / plaintiff that he is unaware about the said sales that are effected by the petitioner herein in favour of the respondents 2 to 8. As the first respondent / plaintiff is having full knowledge about the existence of the properties that are now sought to be included in the suit schedule, as on the date of filing of the suit and in the absence of assigning any sufficient reason for not including the said properties in the suit schedule originally, allowing such an application filed under Order 6, Rule 17 of CPC is totally contrary to Order 6, Rule 17 of CPC. Further as against the specific contention raised by the petitioner herein contending that the properties that are sought to be added to the plaint schedule are the personal properties of the petitioner herein, the trial Court without even *prima facie* verifying as to whether the said properties are the properties belonging to the trust in respect of which the scheme is sought to be framed, allowed the application by holding that the said issue can be gone into at the time of trial and disposal of the suit.



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Such an approach of the Trial Court is totally impermissible. Unless the Court *prima facie* satisfies that the proposed properties can also be subjected to the relief sought in the main suit. Allowing such an application and subjecting the said properties to the rigour of trial and requiring the petitioner / defendant to face such a trial that too by impleading third parties, who are admittedly the purchasers of said properties much prior to the date of filing of suit is totally erroneous.

3. Further the present amendment application is filed after conclusion of the evidence of plaintiff and after D.W.1 was examined as defendant witness i.e., almost at the fag end of the suit. The learned Trial Court failed to assign any reason nor this Court can find any justification in the order under revision for allowing such application at the belated stage. In the considered view of this Court, the said application appears to be only intended to drag the suit proceedings and which was unfortunately facilitated by the learned Trial Court.

4. In the light of the above, this Court is unable to sustain the order under revision and in the light of the above, the order under revision is liable to be set aside and the same is accordingly, set aside. Consequently, I.A.No.83 of 2017



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shall stands dismissed. Consequent, upon dismissal of I.A.No.83 of 2017, I.A.No.84 of 2017 also shall stands dismissed.

5. Accordingly, both the Civil Revision Petitions stand allowed. However, it is left open to the first respondent / plaintiff to work out his remedies otherwise available under law. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

28.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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



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MUMMINENI SUDHEER KUMAR, J.

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