



CMP(MD) No.7776 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Friday, the Thirteenth day of December Two Thousand and Twenty Four

PRESENT

The HONOURABLE MR. JUSTICE K.MURALI SHANKAR

CMP(MD) No.7776 of 2019

IN

SA(MD) No.174 of 2019

GUNASEKARAN

... PETITIONER(S)

Vs

1 VANTHIA PAPPAAIAH (DIED)

2 SAHAYARAJ,

3 IMMACULATE SAROJA

4 ARBERT

5 MOHAMMED MYDEEN

6 NAGOOR MEERAL @ NAJMA

7 SYBOORNISHA BEGAM

8 JAIDHOON

9 SHEIK SYED ALI

10 FURZHANA BEGAM

11 MYDEEN MEERAL

12 SYED MALIK ALI

13 SYED ALI FATHIMA

... RESPONDENT(S)

For Petitioner(s) : Mr.J.Parekh Kumar for Mr.P.Santhosh Kumar

For Respondent(s) : Mr.V.M.Balamohan Thambi for M/s.S.Navamani for R2 to R4

Mr.S.P.Maharajan for R11

Mr.H.Arumugam for R13

No Appearance for R6, R7, R8, R9, R10, R12



WEB COPY



CMP(MD) No.7776 of 2019

ORDER

Reserved on : 26.11.2024

Delivered on : 13.12.2024

The Civil Miscellaneous Petition has been filed under Order I Rule 10(2) of C.P.C., for impleadment of the proposed parties as respondents 5 to 13 in the second appeal in S.A(MD)No.174 of 2019.

2.The petitioner is the appellant. The petitioner has filed the above second appeal challenging the judgment and decree passed in A.S.No.84 of 2010, dated 27.07.2012 on the file of the Subordinate Court, Ambasamudiram in modifying the judgment and decree made in O.S.No.26 of 2004, dated 26.10.2010 on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi.

3. Pending second appeal, the petitioner has filed the above petition under Order I Rule 10(2) of C.P.C., to implead the respondents 5 to 13.

4. The petitioner's case is that the suit property is a part of S.No.333 of Cherankovilpathu Village, Tirunelveli District; that originally the S.No.333 was having an extent of 15.52 acres, in which 20 cents came to be acquired for road and the remaining extent of 15.30 acres has been sub-divided as S.No.333/1; that one Minor Muthumariammal had filed the suit for partition in O.S.No.228 of 1962 on the file of the District Munsif Court, Ambasamudiram through her guardian



CMP(MD) No.7776 of 2019

WEB COPY

Mayilammal in respect of S.No.333/1 and other properties; that final decree came to be passed on 17.08.1964 and in which, S.Nos.333/1, 329/3, 334 and 341 were classified as common properties; that one Palaniyandi Muthaliar, who is a party to the above partition suit, had purchased the undivided share to an extent of 2.54 acres in S.No.333/1 and undivided share of one Ramalinga Adaviar in respect of S.Nos.334, 336, 337, 338, 339 and 343 vide sale deed, dated 15.12.1950; that the said Palaniyandi Muthaliar sold the undivided shares to an extent of 1.27 acre in S.No.333/1, 1.45 acre in S.No.334, 84 cents in S.No.337 and 65 cents in S.No.38 to one Muthiah Thevar under Ex.B.2 and in which, the boundary has been mentioned common to all four survey numbers as north of Karambai Tank, west of Moovar Tank Punja, East of Manimuttar Channel and south of Thikkupery Tank; that the petitioner/appellant has purchased the said property under Ex.B.3; that the said Palaniyandi Muthaliar thereafter sold the undivided share to an extent of 1.27 acre in S.No.333/1, 96 cents in S.No.336, 74 cents in S.No.339 and 1.01 acre in S.No.343 to one Avudaiappa Thevar under Ex.B.4 by mentioning common boundary of all four survey numbers; that the said properties were transferred several hands under Ex.B.4 to Ex.B.9 and finally the petitioner/appellant got the same under Ex.B.10 and the joint patta came to be issued to all the persons including the petitioner; that the S.No.333/1 had been sub-divided as 333/1A and 333/1B and thereafter, S.No.333/1A has been



CMP(MD) No.7776 of 2019

WEB COPY

sub-divided as 333/1A1 and 333/1A2 without the knowledge of the petitioner and his predecessors; that the plaintiff has claimed that her husband Pappaiah got the property under Ex.A1 to an extent of 2 acres in S.No.333/1A1 in which southern side boundary has been shown as the lands of Gnanamichel; that the said Gnanamichel and his brother jointly purchased 4.10 acres in S.No.333/1 out of 5.10 acres belonging to one Ammaluammal and one Chellappa Gounder got remaining 1 acre and subsequently, the said Chellappa Gounder and one Kathirvel got 2.05 acres each from Gnanamichel and his brother; that the Chellappa Gounder and Kathirvel sold the entire extent of 5.10 acres to Mohammed Mydeen and Laila Begam under Ex.B.18 and thereafter, they sold the land to an extent of 6.77 acres to one Mydeen Meeral and Nalla Meeran fraudulently under Ex.B.19 grabbing the plaintiffs property to an extent of 1.67 acre, which situates on the northern side of 5.10 acres; that though the petitioner has averred the above aspects in the written statements, the Courts below failed to consider the same and that therefore, it has become just a necessary that the vendors and purchasers in Ex.B.19 are to be impleaded as parties to the present appeal so as to find out the truth.

5. The respondents 2 to 4 have filed counter affidavit disputing the affidavit averments and further stated that the S.No.333 of Cherankovilpathu Village was subdivided into S.Nos.333/1A1, 333/1A1A, 333/1A1B, 333/1A1A1 and 333/1A1A2 ;



CMP(MD) No.7776 of 2019

WEB COPY

that the father of these respondents purchased the property in S.No.333/1A1, which is the subject matter of the suit in O.S.No.26 of 2004; that the petitioner has filed the present petition to implead the owners of the property lies in entire S.No.333 of Cherankovilpathu Village; that the petitioner has repeated what was stated in the written statement and the same was rejected by the Courts below; that since the appellant alone had disputed the title of the plaintiff and none-else, as such there was no cause of action against the proposed respondents; that the dispute was only with the appellant and the Courts below decreed the suit and declared the title of the respondents 1 to 3 as against the petitioner; that the plaintiff being the dominus litis alone can decide and add the parties as defendants in the suit; that the defendant in the suit has no locus standi and incompetent to implead the parties as co-defendants; that the defendant cannot agitate and settle the dispute with others in the suit filed by the plaintiff that too in the appeal and that since the above petition is vexatious and devoid of merits, the same is liable to be dismissed.

6. At the outset, it is pertinent to note that the petitioner/appellant himself has stated in his affidavit that the aspects now canvassed in the affidavit filed in support of the above petition were already taken in the written statement itself and the same came to be rejected by the trial Court as well as by the first appellate Court.

7. As rightly contended by the learned counsel for the respondents, the



CMP(MD) No.7776 of 2019

petitioner, after losing his battle in both the Courts below, has been attempting to divert the issue by alleging that the impleadment of other owners in respect of the entire S.No.333 of Cherankovilpathu are necessary for deciding the issue now under challenge.

8. No doubt, the general rule is that the plaintiff is the dominus litis and he can choose the persons against whom he wishes to litigate and cannot be forced to sue a person against whom, he does not seek any relief. But at the same time, the said general rule is subject to the provisions of Order I Rule 10(2) of C.P.C., as per which, the Court may add any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any person, who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit, be added.

9. No doubt, the discretion of the Court under Order I Rule 10(2) of C.P.C., is limited and it is only if a party is necessary or a proper that they can be directed by the Court to be joined in the proceedings. The Hon'ble Supreme Court in catena of decisions has reiterated the settled position that a necessary party is one without whose presence, no effective decree can be passed and without whom the suit itself



CMP(MD) No.7776 of 2019

WEB COPY

would be liable to be dismissed and that a proper party is one in whose absence an effective order can be made, but whose presence is necessary for complete, effective and proper adjudication on the questions involved in the proceedings.

10.No doubt, Order I Rule 9 of C.P.C., provides that no suit shall be defeated by reason of the mis-joinder or non-joinder of parties, but only exception as per the provision is that the said rule shall not apply to non-joinder of necessary party.

11. The Hon'ble Supreme Court in the case of Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others reported in AIR 2019 SC 3577, has reiterated that in a suit, the plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law.

12. In the case on hand, it is pertinent to note that the above impleadment petition came to be filed in the appeal stage. Though the petitioner has alleged that he had raised the aspects now canvassed before the trial Court itself, it is not the specific case of the petitioner that she had taken a stand that the proposed parties are necessary or proper parties to the suit, but that plea was rejected by the Courts below.

13. As rightly contended by the learned counsel for the respondents even according to the petitioner, the proposed parties cannot be considered as necessary or proper parties. Moreover, as rightly contended by the learned counsel for the respondents, if the impleadment is permitted, it will have the effect of setting aside



CMP(MD) No.7776 of 2019

WEB COPY

the judgment and decree of the Courts below and ordering for trial from the very beginning as the impleaded parties have to be given sufficient opportunity to file their written statement and to offer an opportunity to take part in the trial.

14. Viewing from any angle, this Court has no hesitation to hold that the present petition is absolutely devoid of merits and the same has been filed only to drag on the proceedings and the same is liable to be dismissed.

15. In the result, the Civil Miscellaneous Petition is dismissed.

sd/-

13/12/2024

/ TRUE COPY /

/02/2025

Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DAS

TO

1 THE SUBORDINATE JUDGE, AMBASAMUDIRAM.

2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, CHERANMAHADEVI.

ORDER IN

CMP(MD) No.7776 of 2019 IN SA(MD) No.174 of 2019

Date :13/12/2024

RS/VR/SAR-3(19.02.2025) 8P 3C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023