



C.R.P (PD)(MD)No.1489 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 14.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.1489 of 2018

and

C.M.P(MD)No.6467 of 2018

V.Vijaya

: Petitioner/Petitioner
Proposed 2nd Plaintiff

Vs.

1.Laila Banu

: 1st Respondent/1st Respondent
Plaintiff

2.Palanisamy

: 2nd Respondent/2nd Respondent
Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 01.02.2018 passed in I.A.No.421 of 2017 in O.S.No.4 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri.

For Petitioners : Mr.F.X.Eugene

For Respondent : Mr.S.Suresh Manickam

: No representation, for R2.



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ORDER

The Civil Revision is directed against the order passed in I.A.No.421 of 2017 in O.S.No.4 of 2009, dated 01.02.2018 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri, dismissing the petition filed under Order 22 Rule 10 of the Code of Civil Procedure.

2. The first respondent as plaintiff has filed the above suit claiming declaration that the suit properties are belonging to her and for permanent injunction restraining the defendant and his men from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The second respondent/defendant has filed a written statement and is contesting the suit.

3. It is not in dispute that the trial has already been commenced and when the case was pending for plaintiffs' side further evidence, after the examination of P.W.1 and P.W.2, the above petition came to be filed by the third party/the present revision petitioner to implead her as the second plaintiff on the ground that she has purchased the property from the plaintiff vide sale deed, dated 17.10.2016. The respondent/defendant has filed a



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counter statement raising objections. The learned trial Judge, after enquiry, has passed the impugned order, dismissing the said petition.

4. The learned counsel for the petitioner would submit that the plaintiff has sold the property to the petitioner/proposed party on 17.10.2016 and that therefore, in the impleading petition as well as in the present revision, the plaintiff remained ex-parte.

5. As rightly contended by the learned counsel for the first respondent, the present revision petitioner/third party has filed an application through the another counsel and sought for her impleadment.

6. It is not the case of the proposed party that the original plaintiff has agreed to withdraw from the suit or that he has no objection for impleading the proposed party to prosecute the suit on her behalf.

7. Considering the facts and circumstances of the case, the proposed party, in the absence of any consent of the original plaintiff cannot be impleaded as the second plaintiff. But at the same time, the proposed party can sought for her impleadment as the defendant. The learned counsel would



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further submit that the plaintiff has already examined two witnesses and in case, if the proposed party is not in the picture, then the defendant will get a decree that would be against the interest of present petitioner.

8. As rightly contended by the learned counsel for the first respondent, the proposed party can very well be impleaded as one of the defendant and in case, if the plaintiff fails to prosecute the suit further, then she can very well intervene and transpose herself as plaintiff and then to prosecute the suit.

9. Considering the facts and circumstances of the case and also taking note of the observation of the trial Court, the impunged order dismissing the petition cannot be found fault with. Hence, this Court concludes that the revision petition is devoid of merits and the same is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. The petitioner is at liberty to file an application to implead herself as defendant and if such an application is filed, the trial Court is directed take the same on file and to consider the same and pass orders in accordance with law. The trial Court is further directed to proceed with the trial and dispose of the suit



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within a period of three months from the date of filing of the impleading petition by the proposed party. Consequently, connected Miscellaneous Petition is closed. No costs.

14.03.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

- 1.The District Munsif cum Judicial Magistrate Court,
Sivagiri.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Order made in
C.R.P.(PD)(MD)No.1489 of 2018
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Dated : 14.03.2024