



CMP(MD) No.16889 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)
Monday, the Twelfth day of February Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice P. DHANABAL

CMP(MD) No.16889 of 2023
in
AS(MD)No.66 of 2016

1 JEYABALAN

2 MURUGAN

3 BALAKRISHNAN ... PETITIONERS/PROPOSED RESPONDENTS 6 TO 8

Vs

1 A.ADAL ARASAN

2 S.MURUGESAN

3 R.S.MURUGESAN, ... RESPONDENTS 1 TO 3/ APPELLANTS

4 SADACHARAM

5 GANESAN

6 SUNDARAM

7 PANNERSELVAM

8 KARUPPIAH ... RESPONDENTS 4 TO 8/RESPONDENTS 1 TO 5
(RESPONDENTS 4 TO 8 ARE REPRESENTED ON
BEHALF OF KALIYANAGARI PASIPATTINAM
VILLAGE)



CMP(MD) No.16889 of 2023

Civil Miscellaneous petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to implead the petitioner herein as the respondents 6 to 8 in the above A.S(MD) No.66 of 2016.

PRAYER in AS(MD)No.66 of 2016:

To set aside the Judgment and Decretal Order dated 24.11.2015 passed by the Additional District Judge, Ramanathapuram in O.S.No.2 of 2011 and allow the First Appeal.

ORDER : This Civil Miscellaneous Petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.P.THİYAGARAJAN, Advocate for the petitioner and of Mr.J.VEERAKUMAR, Advocate on behalf of the Respondents 1 to 3 and Mr.K.ARUNRAJ, Advocate for the respondents 7 & 8, the Court made the following order:-

This petition has been filed by the petitioners to implead them as respondents 6 to 8 in A.S(MD) No.66 of 2016.

2. According to the petitioners, the main Appeal Suit has been filed by the unsuccessful plaintiffs in O.S.No.2 of 2011, on the file of the Additional District Court, Ramanathapuram, challenging the judgment and decree, dated 24.11.2015. In the said suit, defendants were arrayed as the representatives of Kaliyanagari and Pasippattinam Villages, Thiruvadanai Taluk, Ramanathapuram District, under Order 1 Rule VIII of C.P.C, to defend the suit.



CMP(MD) No.16889 of 2023

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3. In the said suit, the first defendant filed his written statement and the other defendants in the suit adopted the written statement of the first defendant. The suit was filed for the relief of declaration of title and for the consequential relief of permanent injunction. During the pendency of the suit, the second respondent in the appeal, who was second defendant in the suit died on 24.07.2011. However, no steps were taken and as such in the appeal also, he has been arrayed as second respondent. While so, during the pendency of the appeal, the first respondent also died on 01.05.2022 and the third respondent died on 31.05.2017. Since the respondents 1 to 3 were arrayed only in the representative capacity as the representatives of the Kaliyanagari Villagers, no steps was taken to bring their legal representatives on record.

4. Though the defendants 4 and 5 in the suit, who were arrayed as respondents 4 and 5 in the appeal suit are alive and expected to contest the above appeal in an effective manner, they have expressed that they are not having the interest to contest the appeal on behalf of the villagers of Kaliyanagari Village and as such it become necessary to the villages to conduct a meeting, dated 26.11.2023 and nominated the petitioners herein to implead them as parties to the appeal under Order 1 Rule 8(3) C.P.C., so as to effectively contest the appeal. Hence, they filed this application.



CMP(MD) No.16889 of 2023

WEB COPY

5. The second respondent has filed a counter stating that the respondents 1 and 3 herein had filed a suit for declaration and for permanent injunction before the learned Additional District Judge, Ramanathapuram in O.S.No.2 of 2011 as against the respondents 4 to 8 herein in respect of suit schedule properties and the same was dismissed. As against the same, the present appeal has been preferred.

6. Pending the appeal, a memo was served to the counsel for the respondents in respect of the deceased respondent to enable us to bring the legal heirs. At the time, this Court passed an order that the suit was filed as against the defendants in their representative capacity and apart from the deceased the other defendants are still alive and they still represent for the village. Therefore, the impleadment of legal heirs will not arise.

7. Under the above said circumstances, the present petition moved by the third party/proposed respondents without assigning any reason, when the respondents 7 and 8 herein/defendants 4 and 5 in the main suit are still alive and contesting the present appeal, therefore, the proposed parties are not proper and necessary parties. Hence, this petition is liable to be dismissed.



CMP(MD) No.16889 of 2023

8. The 7th respondent has filed a counter affidavit stating that the averments in the petition are denied. It is true that the respondents 1 to 3 in the appeal died on various dates. The respondents were only added under the representative capacity of the Kaliyanagari Village is denied. The respondents 7 and 8 are contesting the suit on behalf of the villagers. Therefore, the present petitioners are not proper and necessary parties and thereby this petition is liable to be dismissed.

9. The learned counsel appearing for the appellants/petitioners would contend that the appellants/plaintiffs have filed the suit before the trial Court by adding the villages in the representative capacity and the suit was dismissed. As against the dismissal order, the appellants filed the present appeal suit. In the suit, the villages of Kaliyanagari Village were added as parties. Unfortunately, all those parties who represented the Kaliyanagari Village died during the pendency of the suit as well as the appeal. Therefore, in order to defend the appeal it is necessary to bring this petitioners to represent for the villages Kaliyanagari.

10. The learned counsel appearing for the respondents/appellants would contend that already the second defendant died during the pendency of the appeal



CMP(MD) No.16889 of 2023

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and this Court passed an order stating that other respondents/defendants are alive and still representing the villages. In such circumstances, adding of legal heirs of the deceased second respondent will not arise. While so, the respondents 1 and 3 in the present appeal also died and however, the other respondents 4 and 5 have contested the same so far. Therefore, the present petition was filed by the third parties to the suit and they are in no way connected with the suit schedule properties. Therefore, the present petitioners are not proper and necessary parties to adjudicate the matter. Hence, this petition is liable to be dismissed.

11. This Court heard both sides and perused the materials on record.

12. In this case, according to the petitioners, they are proper and necessary parties and the suit is filed by the plaintiffs as against the defendants under the representative capacity. The villagers of Kaliyanagari and Pasipattinam Villages were arrayed as defendants and to represent the Kaliyanagari Village all the defendants were died during the pendency of the suit as well as the appeal. Therefore, to represent the Kaliyanagari village the present petitioners have to be impleaded as parties to defend the suit effectively. Though the other defendants are contesting this appeal, they belong to Pasipattinam village and no representatives to the village of Kaliyanagari village. Therefore, in order to defend the suit



CMP(MD) No.16889 of 2023

WEB COPY

effectively on behalf of the villagers viz., Kaliyanagari it is just and necessary to allow this petition. According to the respondents already other defendants are contesting the case effectively and thereby these petitioners need not be impleaded.

13. In the case on hand, the appellants/plaintiffs themselves impleaded the two villages viz., Kaliyanagari and Pasipattinam Villages and the persons, who represent for the village of Kaliyanagari Village were died during the pendency of the suit as well as the appeal. This fact is admitted by the respondents. Hence, there is no representative to represent the village of Kaliyanagari Village. Therefore, to represent the village of Kaliyanagari, these petitioners have to implead as necessary parties, and by impleading the petitioners, no prejudice would be caused to the respondents and thereby this petition is liable to be allowed.

14. As far as the judgment submitted by the learned counsel for the respondents is concerned, the Hon'ble Apex Court in the case of (*Bharat Sanchar Nigam Limited vs. Ghanshyam Dass (2) and others*) reported in (2011) 4 SCC 374, held that the fence-sitters who did not approach the Court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others under Order 1 Rule VIII of C.P.C.

15. On careful perusal of the said judgment it will not be applicable to the present facts of the case, since the facts are distinguished.



CMP(MD) No.16889 of 2023

16. Accordingly, this petition stands allowed. No costs.

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12/02/2024

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

EBSI
TO
THE ADDITIONAL DISTRICT JUDGE,
RAMANATHAPURAM.

ORDER
IN
CMP(MD) No.16889 of 2023
in
AS(MD)No.66 of 2016
Date :12/02/2024

SS/GS/SAR- /21/02/2024/8P/2C

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