

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4343 of 2015

and

M.P.No.1 of 2015

A.Subramaniyan

.. Revision Petitioner/Proposed Party

Vs.

1.Selvakumar

2.Krishnaraj

3.Senthil

.. Respondents/Respondents/Plaintiffs

4.Thilagavathy

5.Arumugam

.. Respondents/Respondents/
Defendants 1 & 2

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.01.2015 made in I.A.No.474 of 2014 in O.S.No.30 of 2012 on the file of the learned District Munsif -cum- Judicial Magistrate, Portnovo.

For Petitioner : Mr.Rajavelavan

ORDER

Heard the learned counsel appearing for the revision petitioner.

2. The revision petitioner has come forward with the present Civil Revision Petition challenging the impugned order dated 28.01.2015 made in I.A.No.474 of 2014 in O.S.No.30 of 2012, wherein the application filed under Order 1 Rule 10 CPC came to be dismissed.

3. The learned counsel for the revision petitioner would submit that the revision petitioner is the Secretary of the 'Kuluppai Ramasamy Chettiar Dharma Paribalana Sabai'. The respondents 1 to 3 herein as plaintiffs had filed the suit in O.S.No.30 of 2012 for bare injunction restraining the respondents 4 and 5 herein, who are the defendants 1 and 2 in the suit from interfering with their peaceful possession and enjoyment of the suit property stating that the properties belong to the above mentioned trust. One Manthiramoorthy is the lessee under the trust and the plaintiffs/respondents 1 to 3 had purchased the lease hold right over the suit property from the said Manthiramoorthy under the sale deed dated 18.04.2011 and from

then on, they are in possession and enjoyment as lessee. Further, the Secretary of the 'Kuluppai Ramasamy Chettiar Dharma Paribalana Sabai' also leased out the suit property with the plaintiff for 3 years for a rent of Rs.600/- p.a. But the defendants 1 and 2 tried to interfere with the possession of the plaintiffs and hence, they were forced to file the suit for bare injunction.

4. The defendants filed the written statement and contested the suit, wherein at paragraph 6 it was stated that the Secretary of Kuluppai Ramasamy Chettiar Dharma Paribalana Sabai is just and very necessary party to this proceeding but he had not been impleaded as a party and hence the suit is liable to be dismissed on ground of non-joinder of necessary parties'. Admittedly, the petitioner herein had received summons from the Court for deposing evidence and thereafter, he had filed the application to implead himself as a party. But the Trial Court had dismissed the said application and as against the same, the present Civil Revision Petition has been preferred.

5. Considered the submission made by the learned counsel for the revision petitioner and perused the typed set of papers.

6. The suit was filed by the plaintiffs/respondents 1 to 3 for bare injunction stating that the suit property originally belonged to 'Kuluppai Ramasamy Chettiar Dharma Paribalana Sabai' which is a charitable trust and it was leased out to one Manthiramoorthy, from whom the plaintiffs purchased the lease hold right under the sale deed dated 18.04.2011. Further, the Secretary of the 'Kuluppai Ramasamy Chettiar Dharma Paribalana Sabai' also leased out the suit property with the plaintiffs for 3 years for a rent of Rs.600/- p.a. However, the respondent 4 and 5 herein who are the defendants 1 and 2 in the suit attempted to interfere with the possession of the plaintiffs and hence, the plaintiffs were forced to file the suit for bare injunction.

7. A perusal of the records would show that already P.W.1 and P.W.2 were examined and summons were also issued to the Secretary of 'Kuluppai Ramasamy Chettiar Dharma Paribalana Sabai' to prove that the plaintiffs were the lessee under him. It is a well settled principle that once a suit for bare injunction is filed, it is left open to the plaintiff to choose the defendants and he cannot be forced to select the defendants on the basis of the whims and fancies of the respondents/defendants.

8. In these circumstances, I am of the view that the Trial Court is right in holding that the plaintiffs had not claimed any relief against the proposed party and so, he is not a necessary party to the suit. Hence, I do not find any reasons to interfere with the order passed by the Trial Court.

9. In fine, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs. However, since the argument had already commenced in the suit, the learned District Munsif -cum- Judicial Magistrate, Portnovo is directed to dispose of the suit in O.S.No.30 of 2012, within a period of one month from the date of receipt of a copy of this order.

01.12.2015

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To

The learned District Munsif
-cum- Judicial Magistrate,
Portnovo.

R.MALA, J.

pgp

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