

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD).No.818 of 2015

and

M.P.No.1 of 2015

S.Murugesan

....

Petitioner

Vs.

1.Venkatachalam,

2.The President,

Morur West Panchayat

Vengipalayam Post,

Sankari Taluk,

Salem District.

3.The Block Development Officer,

Sankari Taluk,

Salem District.

4.The Chairman,

Sankari Panchayat Union,

Sankari Town & Taluk,

Salem District.

5.The District Collector,

Collectorate,

Salem.

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Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 18.12.2014 made in I.A.No.501 of 2014 in O.S.No.277 of 2010 on the file of the learned District Munsif Court, Sankari.

For Petitioner : Mr.N.Manokaran

ORDER

This civil revision petition is directed against the order dated 18.12.2014 passed by the learned District Munsif Court, Sankari, in I.A.No.501 of 2014 in O.S.No.277 of 2010.

2. The first respondent had instituted a suit against the respondents 2 to 5 in O.S.No.277 of 2010 for mandatory injunction to remove the encroached portion in the form of soil road over the plaintiff's patta land and for Permanent injunction.

3. The case of the plaintiff is that he is the owner of the property in Survey No.364/1 of Morur Bit-I Village, Sankari Taluk of an extent of 1.80 Hectare and he has been in continuous possession and enjoyment of the property. While so, the defendants along with rowdy elements are trying to encroach the plaintiff's patta land to form a soil road.

4. In the suit, the petitioner filed I.A.No.501 of 2014 under Order 1 Rule 10 (2) and Section 151 C.P.C to implead himself as 5th defendant in the suit. The petitioner has contended that he owns property in S.F.Nos.363/5, 366/2, 364/1 and 363/13 and the general public of Morur Village are using the Cart Track.

There was a pucca Cart Track existing for a long period and the plaintiff had also consented to convert the mud road to thar Road. He has also received money from the petitioner and other people in the village. Hence, he is a necessary and proper party to the suit.

5. The application was opposed by the first respondent. The trial Court dismissed the application. Aggrieved by the order, the present civil revision petition is filed.

6. Mr.N.Manokaran, learned counsel for the petitioner submitted that the first respondent has filed the suit against respondents 2 to 5 for the relief of mandatory injunction to remove the encroached portion over the plaintiff's patta land and for consequential prayer. The petitioner, who is a third party is already having substantial interest over the property which is the subject matter of the suit. The first respondent has given oral consent and agreed to permit the first defendant to convert the mud road into Thar Road and also received a sum of Rs.1,50,000/- from the petitioner and other people in the village. The petitioner has also filed a suit in O.S.No.250/2011 in respect of the same subject matter. So, in the interest of justice, he has to be impleaded as 5th defendant in the suit. But, I am not able to agree with the contention of the learned counsel for the petitioner.

7. It is seen that the first respondent has filed the suit contending that the defendants have encroached into his patta land to form a road in his patta land. Admittedly, the petitioner is the owner of the adjacent land. The plaintiff is the *dominoes litis* and he has to decide against whom, he has filed the suit. It is further seen that the petitioner had already filed a suit in O.S.No.250 of 2011 in respect of the same suit property. There is no cause of action against the petitioner in the suit and the plaintiff has not sought for any prayer against the petitioner. Hence, I am of the view that the petitioner is not a necessary and proper party to the suit. The trial Court has rightly dismissed the application, which does not warrant any interference by this Court.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.03.2015

Index : Yes/No
Internet: Yes/No
sms

To
The learned District Munsif Court, Sankari.

K.KALYANASUNDARAM,J.

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