

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18 - 11 - 2015

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Original Side Appeal No. 241 of 2015
and
M.P. No. 1 of 2015

Nagalingam ... Appellant
Vs.

1. M. Sivalingam
2. Rajini Mahalingam
3. M. Manikandan ... Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 11 of the O.S. Rules read with Clause 15 of the Letters Patent against the Order dated 01.9.2015 made in A. No. 4020 of 2015 in C.S. No. 545 of 2007.

For Appellant : Ms. C. Sangamithirai

For Respondent No.1 : Mr. P.B. Balaji

JUDGMENT

(Delivered by PUSHPA SATHYANARAYANA, J.)

Undaunted by the order of dismissal dated 01.9.2015 passed by the learned single Judge in A. No. 4020 of 2015 in C.S. No. 545 of 2007 seeking impleadment, the applicant has preferred the instant Appeal.

2. From the materials available on record, it is seen that the plaintiff filed suit in C.S. No. 545 of 2007 for declaration that he is the sole and absolute owner of the suit property bearing Flat No. G-3, No. 43, Old No. 18 & 19, 1st Avenue, Indira Nagar, Adyar, Chennai - 20, and for direction to the defendants to vacate and hand over possession of the same. It is seen that originally, the plaintiff's brother-in-law and his family viz., wife and his son, respondents / defendants, were put in possession of the suit property and pursuant to the death of his

brother-in-law, due to the difference of opinion that arose between the parties, they were sought to be evicted by way of filing the suit. While so, the present appellant, who is the younger brother of the plaintiff's brother-in-law, ie., the brother-in-law of the first respondent herein, has filed Application No. 4020 of 2015 seeking to implead himself as third defendant in the suit.

3. Heard the learned counsel appearing for the parties and perused the records.

4. Be that as it may. Indisputably, the appellant knows the plaintiff even before the inception of the suit and they are also closely related to each other from the year 1981, the year when his sister married the plaintiff. Though the plaintiff filed the suit for eviction in the year 2007 against the other brother-in-law, the appellant has not shown any interest for more than seven years nor has he expressed any prejudice to him. It is only after his father's death in January 2015, he has filed the application for impleadment.

5. In case the Court is satisfied that a person is a necessary party to enable it to adjudicate upon and settle all the questions involved in the suit, Court has no other alternative than to order impleading of such party. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

6. In the instant case, it is brought to the notice of this Court that the trial is over in the suit. While so, having allowed the trial to go on, the appellant, at this stage, cannot plead ignorance before this Court. This Court also takes judicial notice of the fact that the other application taken out by the defendants to issue subpoena to the present appellant to give evidence on their behalf, was dismissed and the same was also admitted by the appellant in his affidavit. In such circumstance, this Court is of the considered opinion that the appellant is neither a necessary party nor competent person to speak on factual disputes between the parties to a suit. If at all the appellant is aggrieved or if his rights are affected, he should have approached the Court even before the commencement of trial and the present attempt of the appellant, in our view, is only to stall the proceedings. The learned single Judge has rightly dismissed the application and

no interference is warranted.

The Original Side Appeal is accordingly dismissed and in view of the relationship between the parties, they are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

gri

Sd/-
Asst.Registrar

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Sub Asst. Registrar

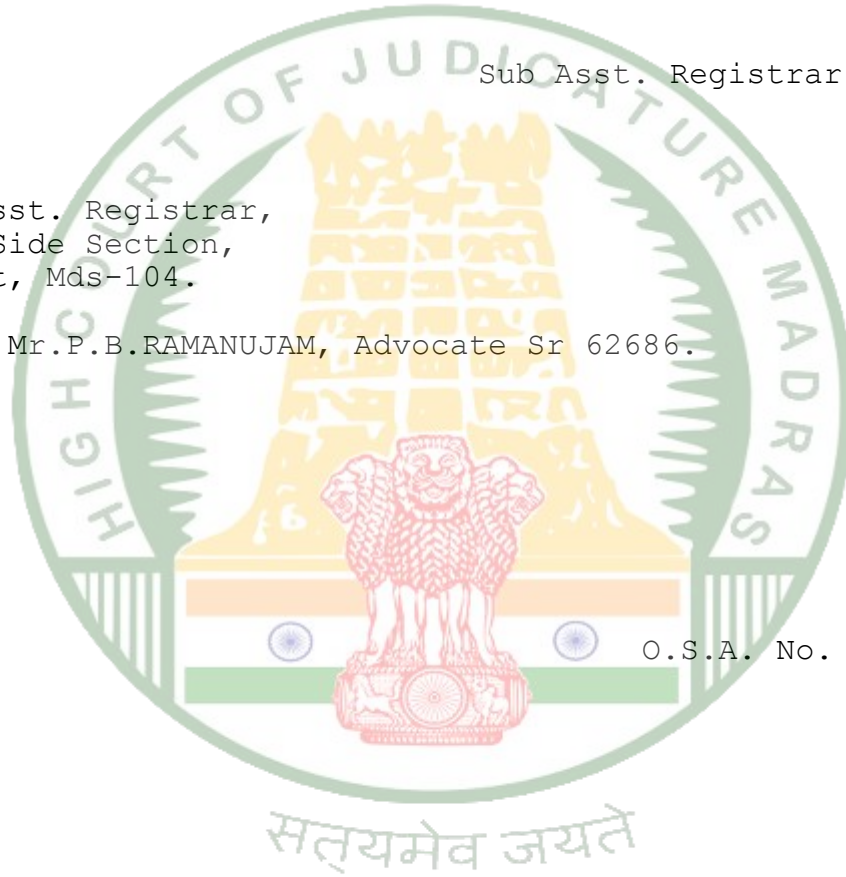
TO

The Sub Asst. Registrar,
Original Side Section,
High Court, Mds-104.

+ 1 cc to Mr.P.B.RAMANUJAM, Advocate Sr 62686.

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