

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1157 of 2014
and M.P.No.1 of 2014

Hajjani Noorjehan Begum Saheba Wakf
rep by its Joint Mutawallis,
Md.Kaleemullah, Md. Abdul Matheen Badsha,
Md.Abdul Mubeen Badsha, Fathima Akthar and
Fathima Azhar, 16/25,
Pillayar Koil Street,
First Lane, Triplicane P.O.,
Chennai - 600 005.

... Petitioner

Vs.

1.S.Victoria

2.Mohammed Faud Badsha Sayeed

3.Mohammed Faiz Badsha

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in C.M.P.No.2524 of 2011 in A.S.No.314 of 2011 dated 07.11.2013 on the file of the VI Additional City Civil Court, Chennai.

For Petitioner : Ms.Sreepriya for M/s.V.Raghavachari

For Respondents : Mr.R.Muthukannu (R1)

ORDER

Challenging the fair and final order passed in C.M.P.No.2524 of 2011 in A.S.No.314 of 2011 on the file of the VI Additional Judge, City Civil Court, Chennai, the 1st respondent in the appeal, who is the plaintiff in O.S.No.9435 of 2006 on the file of the I Assistant Judge, City Civil Court, Chennai has filed the above Civil Revision Petition.

2.The 1st respondent filed the suit in O.S.No.9435 of 2006 for recovery of possession and for past and future damages.

3.After contest, the trial Court decreed the suit on 22.07.2008. Thereafter, the defendant filed an appeal in A.S.No.314 of 2011 in the year 2011 challenging the judgment and decree passed in O.S.No.9435 of 2006.

4.In the appeal, the 1st respondent took out an application in C.M.P.No.2524 of 2011 under Order 1 Rule 10 of the Civil Procedure Code to implead the respondents 2 & 3 as respondents in the appeal. The petitioners filed their counter wherein they have specifically stated that the proposed parties are not necessary parties for proper adjudication of the matter. The petitioner, being the plaintiff in the suit, the defendants cannot compel them to implead a 3rd party. Admittedly, the 1st respondent is in possession

of the suit property and the decree was also passed as against the 1st respondent to deliver vacant possession. The Lower Appellate Court, even without considering the case of both parties, in a casual manner, allowed the application without assigning any reason. The findings of the Lower Appellate Court reads as follows:

“POINT:

6. The petitioner/appellant filed this petition to implead the proposed parties.

7. The proposed parties filed counter not denying the averments and had not denied the impleading of the respondents 2,3 / proposed parties.

8. Hence, in the interest of justice the petition has to be allowed.

9. In the result, the petition is allowed. No costs.”

5. On a reading of the order, it is clear that the Lower Appellate Court has not applied its mind in allowing the application for impleading the proposed parties as respondents in the appeal. On a reading of the counter, it is clear that the proposed respondents are not necessary parties for the adjudication of the matter. The Lower Appellate Court should not have allowed the application.

6.The order passed by the Lower Appellate Court is liable to be set aside. Accordingly, the same is set aside. The Civil Revision Petition is allowed.

7.Since the appeal is pending from 2011, I direct the VI Additional City Civil Court, Chennai to dispose of the appeal in A.S.No.314 of 2011 on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

21.01.2016

To

The VI Additional City Civil Court,
Chennai.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.1157 of 2014
and M.P.No.1 of 2014

21.01.2016