

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1793 of 2014

and

M.P. No.1 of 2014

1.Subramaniam
2.Mani @ Venkatachalam
3.Ramachandran

.. Petitioner/Proposed
defendants 4 to 6

Vs.

1.Neelamani
2.Baby alias Alamelu
3.Rajeswari

.. Respondents 1 to 3/
Plaintiffs

4.The Executive Officer
Avinashi Town Panchayat
Tirupur.

5.The Assistant of Town Panchayat
Tirupur.

6.The District Collector
Tirupur.

.. Respondents 4 to 6/
Defendants

Prayer:- This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 14.02.2012 in I.A.No.1544 of 2011 in O.S.No.295 of 2011 on the file of the District Munsif Court, Avinashi, Tirupur District.

For Petitioners : Mr.P.Tamilavel
For R1 to R3 : Mr.S.Mukunth
for M/S.Sarvabhauman
Associates
For R4 and R5 : No appearance
For R6 : Mr.Jayaramarajan, Spl.G.P.(CS)

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 14.02.2012 in I.A.No.1544 of 2011 in O.S.No.295 of 2011 on the file of the District Munsif Court, Avinashi, Tirupur District.

2.The respondents 1 to 3 as the plaintiffs filed a suit in O.S.No.295 of 2011 for permanent injunction restraining the defendants viz., Government Servants (i.e.) Executive Officer, Avinashi Town Panchayat, the Assistant Director of Town Panchayat, Tirupur District, the District Collector, Tirupur District, from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. During pendency of the suit, the revision petitioners herein filed an application in I.A.No.1544 of 2011 for impleading themselves as parties to the suit proceedings. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the proposed parties.

3.Learned counsel for the revision petitioners submits that the plaintiffs/respondents 1 to 3 herein had already filed O.S.No.294 of 2008 for permanent injunction in respect of pathway against the revision petitioners herein. The third revision petitioner has also filed a suit in O.S.No.326 of 2008 against the respondents 1 to 3 herein, for declaration that the plaintiff is entitled to take vehicles through the suit pathway to his house property. Now all the three suits are pending. Since the name of the revision petitioners have been mentioned in para-10 of the plaint in O.S.No.295 of 2011, they are necessary parties to the present suit for proper adjudication. Further, as the subject matter of all the three suits are one and the same, they may be tried jointly to meet out ends of justice. That factum was not considered by the trial Court. Hence, he prayed for allowing the revision.

4.Resisting the same, learned counsel for the plaintiffs/respondents 1 to 3 submits that the plaintiffs have *Dominus litis* to select the persons as defendants in the suit. Since the subject matter of all the three suits are one and the same and also the suits are filed in respect of cart pathway, instead of impleading the revision petitioners as parties to the present suit, all

the three suits may be tried jointly to meet out ends of justice. Therefore, he prayed for dismissal of the revision.

5.The learned Special Government Pleader appearing for the sixth respondent submits that since subject matter of all the three suits are pending, there is no necessity for impleading the revision petitioners/third parties as defendants to the suit and that has been correctly considered by the trial Court in para-8 of its order. Therefore, the impugned order passed by the trial Court does not warrant any interference and thus, prayed for dismissal of the revision.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.On perusal of the typed set of papers, it reveals as follows:

(i)the third revision petitioner herein as a plaintiff filed a suit in O.S.No.326 of 2008 for declaration that he is entitled to take vehicles through the suit pathway to his house property and also for permanent injunction restraining the defendants/respondents 1 to 3 herein and two others from interfering with the plaintiffs' enjoyment

of the suit pathway for taking vehicles to his house property.

(ii)One Poovathal and respondents 2 and 3 herein had filed a suit in O.S.No.294 of 2008 against the revision petitioners herein for permanent injunction restraining the defendants from disturbing with the plaintiffs' peaceful possession and enjoyment of the suit schedule property.

(iii)The respondents 1 to 3 herein as the plaintiffs filed the present suit in O.S.No.295 of 2011 against the Government servants as stated above for permanent injunction restraining the defendants from disturbing with the plaintiffs' peaceful possession and enjoyment of the suit schedule property.

8.According to the revision petitioners, subject matter of all the three suits are one and the same. Learned counsel for the revision petitioners has drawn attention of this Court through page No.6 of the typed set of papers, which shows a plan submitted in O.S.No.326 of 2008, wherein it is shown as the revision petitioners herein are having access to the main road from the property situated in S.No.342/3A to enter their house property only to the lane situated in between the properties of all the parties.

9. In para-10 of the present plaint, it was stated that at the instigation of the revision petitioners, they approached the first defendant, who attempted to grab the properties of the plaintiffs. Therefore, the revision petitioners herein filed the present application for impleading themselves as parties to the suit.

10. It is true, revision petitioners' names have been mentioned in para-10 of the plaint. If the suit is for declaration of title and the same has been decreed, it will affect the rights of the third parties. But the present suit is not for declaration of title and it is merely for injunction restraining the defendants from any way disturbing the plaintiffs' peaceful possession and enjoyment of the suit property. It is pertinent to note that in the suit for injunction, the plaintiff has *Dominus litis* to select the persons as defendants for filing the suit. No one can file an application to enter appearance for allowing him as defendant for effective adjudication. In such circumstances, the application filed by the revision petitioners/third parties is not maintainable. The revision petitioners herein are neither necessary nor proper parties for adjudication of the present suit. Because the present suit is only for injunction. The third revision petitioner had already filed the suit for declaration that he is entitled to use the

pathway and take vehicle to his property. Therefore, the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, Civil Revision Petition is dismissed.

11. Furthermore, in respect of the suit property, three suits are pending. The suit in O.S.No.294 of 2008 is also mentioned in para-10 of the present plaint. Therefore, it is a fit case to order for joint trial of all the three suits for effective adjudication. The Presiding Officer, District Munsif Court, Avinashi, Tirupur District, is directed to try all the three suits viz., O.S.Nos.326 of 2008, 294 of 2008 and 295 of 2011 jointly and dispose them within a period of six months from the date of receipt of a copy of this order, after giving fair opportunity to both sides. No costs. Connected Miscellaneous Petition is closed.

21.01.2016

Index:Yes/No

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R.MALA,J.

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To

The District Munsif Court, Avinashi, Tirupur District.

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