

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.Nos.216 & 217 of 2012
and
M.P.Nos.1 of 2012

O.S.A.No.216 of 2012

O.Rajalakshmi .. Appellant

vs

1.M/s.Sri Visa Matriculation Higher
Secondary School,
rep. by its Correspondent Mr.A.Mohammed Yeesa,
No.9, Mint Street,
Chennai-600 079.

2.S.G.Jothiswari

3.S.O.Poornima

4.G.S.Kamaleash

5.r.Banumathi

6.A.Thennarasu

7.V.Nedunchelian

8.R.Mani

9.S.Ragupathi

10.V.Ramadevan

11.R.Shyalaja

12.D.Vijayakumar

13.G.J.Sivakumar

14.D.Lakshmi

15.Mythili Sivakumar

.. Respondents

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O.S.A.No.217 of 2012

O.Rajalakshmi

.. Appellant

vs

1.M/s.Sri Visa Matriculation Higher
Secondary School,
rep. by its Correspondent Mr.A.Mohammed Yeesa,
No.9, Mint Street,
Chennai-600 079.

2.S.G.Jothiswari

.. Respondents

Original Side Appeals filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 11.10.2011 in A.Nos.3354 & 3355 of 2011 in O.A.No.460 of 2011 in C.S.No.51 of 2007 on the file of this Court.

For Appellant ... Mr.K.Mohanamurali

For Respondent ... Mr.M.V.Venkataseshan for R1 in
both appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice)

The plaintiff has filed a partition suit. School is stated to be running on the property in question. It appears that one of the co-owners being the first defendant in the suit (second respondent herein) gave certain rights to the first respondent herein to run classes of the school from L.K.G. to V standard. In view of the disputes pending inter se the parties, interim injunction being granted, the first respondent approached the Court seeking impleadment in the suit as well as in O.A.No.460 of 2011 to protect its rights.

2. In terms of the impugned order of the learned Single Judge dated 11.10.2011, the prayer has been allowed noticing that though in normal circumstances, the first respondent not being a co-sharer would not be liable to be impleaded, since there was an interim injunction order in favour of the plaintiff restraining the disturbance of the peaceful possession and enjoyment, the first respondent should be impleaded as a party.

3. We are unable to accept the reasoning of the learned Single Judge. Only the co-sharer would be necessary and proper party in the suit for partition. It is not even as if the first respondent claims any title, but the dispute pertains to running and the management of the school. The interim order granted in favour of the plaintiff cannot be used to disturb the running of

the school qua the first respondent, which has been given certain rights by the second respondent/first defendant. If the first respondent has any grievances arising from the agreement with the second respondent/first defendant, that, in our view, would be a separate cause of action, for which it is always open to the first respondent to prefer an independent suit.

4. In view of the aforesaid, the appeals are allowed. The impugned order is set aside in the aforesaid terms, leaving the parties to bear their own costs. Consequently, M.P.Nos.1 of 2012 are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

bbr

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

1 cc to M/s.Mohanamurali, Advocate, sr.53917

2 ccs to Mr.M.V.Venkateseshan, Advocate, sr.53915,53916

O.S.A.Nos.216 & 217 of 2012

ssk co
kra 29.09.2016

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