

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2016

CORAM:

THE HON 'BLE MR. **JUSTICE K.K.SASIDHARAN**

Civil Revision Petition (PD) No.2023 of 2016
and C.M.P.No.10540 of 2016

N.Shanmugam

... Petitioner

Versus

1. S.Eeswaran
2. E.Vijayakumar
3. E.Gopi

... Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders, dated 22.09.2015, passed in I.A.No.635 of 2015 in O.S.No.175 of 2014 on the file of the Principal District Munsif Court at Erode.

For Petitioner : Mr. V.Regunathan

For Respondents : Mr. S.Kaitha Malai Kumaran

ORDER

The respondents filed a suit for injunction against the petitioner. In the said suit the petitioner filed an application in I.A.No.635 of 2015 to receive counter claim. The petitioner wanted a decree of declaration.

2. The application filed by the petitioner in I.A.No.635 of 2010 was dismissed on the ground that necessary parties were not impleaded, meaning thereby, Boomithanam Board was not made as

a party to the suit. The said order is under challenge in this Civil Revision Petition.

3. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents.

4. The trial court dismissed the application in I.A.No.635 of 2015 only on the ground that Boomithanam Board was not made as a party to the suit. According to the trial court, the decree of declaration could be passed only in the presence of Boomithanam Board.

5. The question of impleading would arise only after allowing the application. The learned Trial Judge was not correct in dismissing the application on the ground of non-impleading.

6. In the result, the order dated 22.09.2015 is set-aside. The application in I.A.No.635 of 2015 is allowed.

7. The petitioner is directed to file an application to implead Boomithanam Board as a party to the suit. In case no such application is filed necessarily, an issue should be framed by the learned Trial Judge with regard to non-joinder of necessary parties.

8. The Civil Revision Petition is allowed with the above observation. No costs. Consequently, the connected CMP is closed.

16.11.2016

srk

To

1. Principal District Munsif Court at Erode.

K.K.SASIDHARAN, J.,

srk

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