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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.642 of 2016
and
C.M.P.(MD).No.6846 of 2016

Rama Subbu ... Appellant

Vs.

N.Ramasamy ... Respondent

Prayer: Appeal filed under Order 43 Rule 1(U) of Civil Procedure Code, against the fair and decreetal order dated 27.11.2015 made in I.A.No.80 of 2014 in A.S.No.10/2014, on the file of Subordinate Judge, Devakottai.

For Appellant : Mrs.S.Srimathy for
Mr.D.Paneerselvam
For Respondent : Mr.V.R.Shanmuganathan,

JUDGMENT

Heard the learned counsel on either side.

2.The appellant is the plaintiff in O.S.No.39 of 2011, on the file of the District Munsif Court, Devakottai. The suit was filed for declaration and permanent injunction. One Ramasamy alone was made as the sole defendant in the suit. The suit was dismissed on 27.01.2014. Aggrieved by the dismissal of this suit, the appellant herein filed A.S.No.10 of 2014, before the Subordinate Court, Devakottai. The appellant herein filed I.A.No.80 of 2014, seeking remand of the matter so as to permit the appellant to implead the persons who had purchased the property from the defendant and his brother.

3.A mere look at the affidavit filed in support of I.A.No.80 of 2014, would show that the appellant came to know that the suit property was sold by the defendant and his brother Rajendran to one Meenal from Ex.A4 Encumbrance Certificate. A look at the said Ex.A4 would show that Meenal had purchased the property from the defendant and his brother way back in the year 1999. The suit was filed only in the year 2011. When 12 years prior to the

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institution of this suit, the portion of the suit property had been purchased by the said Meenal. The appellant should have been diligent to implead the said Meenal in the first instance itself. Without doing so, the suit came to be filed only against the vendor of the said Meenal.

4.In other words, even in the first appeal, the present appellant did not file any application for impleading. The prayer in Interlocutory Application is to remand of the matter so as to enable him to implead. Such an application is patently not maintainable in law. The power of remand can be exercised only under circumstances set out in Order 41 Rule 23 and Rule 23(A) of Civil Procedure Code. If the appellant has omitted to implead the necessary party in the suit consequences will have to necessarily follow. After suffering dismissal at the appellate stage, the prayer for remand cannot be made for the purpose of enabling the plaintiff to bring on record the interested and necessary parties. The First Appellate Court rightly dismissed I.A filed by the appellant herein. I find no merit in this appeal.

5.This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
   Devakottai.

2. The District Munsif,
   Devakottai.

3. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

+1cc to Mr.S.M.S. Jonny Basha, Advocate Sr.No.87894

TSG
VB/MR/KKR/SAR2/08/12/2017/2P/5C

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