



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2017

CORAM :

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN,C.R.P (MD) No.543 of 2015 (PD)andC.M.P. (MD) No.1 of 2015

M/s.Banu Paper Mills (Pvt)Ltd.,
Represented by its Director
N.R.Goutham

...Petitioner /3rd Party

-Vs-

1.V.Venkataraman

... 1st Respondent/Plaintiff

2.A.Thara

3.A.Sekar

4.A.Rajinikanth

5.A.Amirtham

...Respondents 2 to 5/
Defendants 1 to 4

K.Annavi (Died)

...Nil/6th Respondent/
5th Defendants

6.A.Balu

7.Kodi Kumaran

8.Meera

9.Latha

...Respondents 6 to 9/
Defendants 6 to 9

Prayer: Civil Revision Petition is filed Under Section 227 of the Constitution of India, to set aside the fair and decreetal order, dated 17.09.2014 made in I.A.No.356 of 2014 in O.S.No.920 of 1998 on the file of II Additional District Munsif Court, Tiruchirapalli.

ORDER

This Revision Petition is filed by a third party, since, the application to get himself impleaded in the suit pending on the file of District Munsif, Trichy was declined.

2.The brief facts involved in this case are as under:

2.1.One K.Vaithiyanathaswamy, as a plaintiff instituted the suit in O.S.No.920 of 1998 on the file of District Munsif, Trichy, against Thara and others for permanent injunction restraining them from the peaceful possession of the suit property. The contention of the plaintiff is that the suit property is owned by M/s.Banu Paper Mills through sale deed, dated 28.03.1974. The plaintiff, being pannai agent of N.R.Sundarajan, who was the Managing Director of the company Viz., M/s.Banu Paper Mills, claiming himself as power agent of one of the Director of M/s.Banu Paper Mills, the present suit was laid.

2.2. The original Plaintiff K.Vaithiyanathaswamy, died, pending suit. Therefore his son V.Venkataraman has been substituted as a plaintiff vide order, dated 28.06.2012 in I.A.No.347 of 2012. After Sixteen years, the revision petitioner herein has taken out an application to implead himself as second plaintiff in the suit, contenting that claiming himself as Pannai Agent of one of the Director of M/s.Banu Paper Mills, the suit was originally filed by the power agent of M/s.Banu Paper Mills in his personal name. Though in the pleadings, he had expressly stated that the suit is filed in the capacity as power agent of M/s.Banu Paper Mills, the suit was laid only in the individual name. Since, in the written statement, the maintainability has been questioned on the ground that the suit is not filed by the M/s.Banu Paper Mills, but by an individual, it is necessary to implead M/s.Banu Paper Mills as plaintiff to avoid technical objections. Since, the company is a proper and necessary party, by such impleading, no prejudice will be caused to the defendant.

2.3.The said application was resisted by the defendant. According to the respondent / defendant, in a suit for permanent injunction, the fact of possession alone to be considered. The question of title and the validity of the agreement made by or on behalf of M/s.Banu paper Mills, is not a fact in issue. Hence, there is no rhyme or reason to implead M/s.Banu Paper Mills in the suit.

2.4. The Trial Court after considering the rival contention has held that originally the suit was filed by the father of the present plaintiff as power agent of M/s.Banu Paper Mills for permanent injunction against the defendant. After death of the original plaintiff based on the new power of attorney deed and on the basis of a resolution passed by a Board of Directors of

M/s.Banu Paper Mills, the present plaintiff has been substituted.

2.5.The Directors of the said company had executed power of attorney to file the suit. Therefore, the petitioner, who is one of the Directors of M/s.Banu Paper Mills, cannot go beyond the earlier resolution of the company. Further there is no necessity to implead the company as one of the plaintiff when the suit has already been initiated by the power agent based on the resolution passed by the Directors of the company.

2.6.It is also pointed out by the trial Court in its order that the suit of the year 1998, could not be disposed of due to the prolonged proceedings and after fourteen years a plea to implead the revision petitioner as plaintiff is not maintainable.

3.The learned counsel for the revision petitioner submitted that since the suit was filed on behalf of the company, there is no legal impediment in impleading the company as one of the plaintiffs in the suit and no prejudice will be caused to the defendant. Whereas, the counsel for the respondent submitted that in the written statement there is no plea regarding the non joinder of necessary party. The very institution of the suit by one K.Vaithiyanathaswamy, claiming as power agent of M/s.Banu Paper Mills is questioned, the petition to implead the company at belated stage is not maintainable.

4.The present application is taken out belatedly after fourteen years. Therefore, the order of the trial court is perfectly legal and sustainable and no necessity to interfere with the same. The suit as laid appears to be a suit filed by an individual claiming himself as power agent of the company. There is no material to show that it is a representative suit or a suit filed by agent with the leave of the court. Even if there is any averment in the pleadings, when it is traversed by the defendant in the written statement, after a lapse of fourteen years, the defect and lacuna cannot be cured by impleading the company as one of the plaintiffs. Since the suit is for permanent injunction, the predominant issue for consideration is the person who is in possession and whether the possession is by way of title or by adverse possession or illegal possession.

5.The suit of this nature impleading new party as plaintiff normally will not arise and in fact, in this particular in the light of the pleadings in this case, certainly, a third party, who claims himself as Director of the company has no locus to get himself impleaded as a plaintiff. Hence, this Court finds no reason to interfere with the order of the Trial Court. Hence, this petition is dismissed with cost of Rs.1,000/- payable to the respondent. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)



To

The II Additional District Munsif,
Tiruchirapalli.

+One cc to Mr.D.Rajkumar, Advocate, SR.No.59685

+One cc to Mr.V.George Raja, Advocate, SR.No.59601

skm/das

RL/4C/4P/RSK/SAR4/22/6/2017

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