



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 23.04.2018
DELIVERED ON : 23.08.2018
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.886 of 2018

AND

C.M.P (MD) No.3927 of 2018

M.Suseela

... Petitioner/Petitioner/Defendant

vs

1.T.Ayyappan

2.A.Muthuramu

... Respondents/Respondents/Plaintiffs

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 27.3.2018 passed in I.A.No.472 of 2017 in O.S.No.56 of 2016 on the file of the Additional District Munsif Court, Thirumangalam, Madurai District.

For Petitioner : Mr.M.Gururaj

For Respondents : Mr.Jahangir Basha

ORDER

This Civil Revision Petition is directed against the order dated 27.3.2018 passed in I.A.No.472 of 2017 in O.S.No.56 of 2016 on the file of the Additional District Munsif Court, Thirumangalam, dismissing the petition filed by the defendant under Order 1, Rule 10(2) of C.P.C.

2. The plaintiffs have filed the suit to declare that the defendant has no right over the encroached portion in the suit property and to handover the encroached portion to the plaintiffs without any let or hindrance and mandatory injunction directing the defendant to demolish and remove the superstructures in the encroached portion of the suit property and also permanent injunction restraining the defendant, her men and agents from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. Pending suit, the defendant has filed I.A.No.472 of 2017 under Order 1, Rule 10(2) of C.P.C. alleging that the first plaintiff has no locus standi to file the suit against the defendant and there was no cause of action arisen in favour of the first plaintiff to present the suit. Moreover, the first plaintiff has no title over the suit property to which he was making a claim along with the second plaintiff.

<https://hcservices.ecourts.gov.in/hcservices/>

4. According to the defendant, the property that the



plaintiffs claiming right in the suit was purchased by the second plaintiff from Indhra, through her power agent, who was none other than the first plaintiff. Having executed the sale deed in favour of the second plaintiff, the first plaintiff has exhausted all his power over the property.

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5. According to the defendant, even prior to the purchase of the property by the second plaintiff from Indhra, the defendant purchased the property and constructed a house under the Tamil Nadu Housing Board's hut clearance scheme with a proper work order from Madurai Corporation. Thus, there was no legal stature vested with the first plaintiff to file the suit against the defendant and that he was not a necessary party to the suit claiming for a cause of action as stated in the plaint. Hence, prayed for striking out the name of the first plaintiff.

6. Resisting the petition, the first plaintiff filed counter stating that the defendant has no right to file the petition under Order 1, Rule 10(2) of C.P.C. Further, the first plaintiff was administering the suit property in the capacity of power agent and he has got power over the suit property and the defendant's husband has got power on the southern side of the suit property. According to the first plaintiff, when the defendant tried to encroach the southern portion of the suit property, the first plaintiff as power agent had lodged a police complaint. On 6.1.2014, the first plaintiff executed a sale deed in favour of the second plaintiff for the suit property. Since thereafter also the defendant continued her illegal activities and encroached upon the suit property, the plaintiffs have filed the suit. Therefore, the first plaintiff has also got right to institute the suit.

7. Upon consideration of the rival submissions, the trial Court dismissed the petition. Assailing the same, the defendant has filed this Civil Revision Petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the materials available on record.

9. The learned counsel for the defendant submitted that the first plaintiff has no locus standi to file the suit along with the second plaintiff and having exhausted his right over the property, first plaintiff has no means to continue further for his claim over the property in any capacity. He would submit that in the capacity of power agent of Indhra, the first plaintiff sold the suit property in favour of the second plaintiff and there was no cause action arisen in favour of the first plaintiff and also <https://hccservices.courts.gov.in/courtservices/> be granted in favour of him. Therefore, the trial Court erred in dismissing the petition and prayed for setting aside the same.



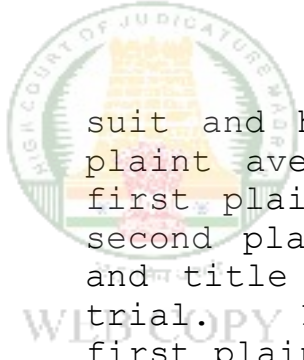
10. Per contra, the learned counsel for the plaintiffs submitted that already the defendant had filed petition being I.A.No.797 of 2016 under Order 7, Rule 11 of C.P.C. and on contest, the said petition was dismissed by the trial Court. Having failed in her first attempt, the defendant had filed the petition under Order 1, Rule 10(2) C.P.C. for striking out of the first plaintiff, as he has no locus standi to file the suit along with second plaintiff. The learned counsel would submit that on 31.12.2013, when the defendant tried to encroach upon the suit property, the first plaintiff in the capacity of the administrator, had lodged a complaint before the Thirunagar Police Station, which would show that the first plaintiff has taken legal action against the defendant. He would further submit that the trial Court was right in dismissing the petition and there is no need to interfere with the same.

11. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the defendant.

12. It appears that the suit property and its extended portion on the south originally belonged to one Indhra. On 5.2.2010, the said Indhra executed a general power of attorney in favour of the first plaintiff qua suit property. On the same day itself, Indhra executed another general power of attorney in favour of the husband of the defendant qua south of the suit property. According to the parties, pursuant to the general power of attorney, both the first plaintiff and the husband of the defendant were administering the respective properties. Thereafter, on 26.5.2010, the husband of the defendant executed a sale deed in respect of south of the suit property in favour of the defendant.

13. It is the say of the defendant that the first plaintiff has no locus standi to file the suit. As rightly held by the trial Court, whether the first plaintiff has right to institute the suit along with the second plaintiff was to be decided only at the time of trial by adducing oral and documentary evidence in the suit. At this stage, it is not possible for the Court to decide that the first plaintiff has no right to institute the suit and there was no cause of action arisen in favour of the first plaintiff as alleged by the defendant.

14. Though the Court might at any stage of proceedings, either upon or without application of either party, order the name of any party improperly joined, whether as plaintiff or defendant, be struck out, in the facts and circumstances of the case on hand, <https://hcservices.courts.gov.in/hcservices/> view that the aforesaid aspect is a matter of evidence. As stated supra, it is not possible at this stage to decide that the first plaintiff is not a necessary party to the



suit and he has no locus standi to file the suit. From the plaint averments, it has been prima facie established that the first plaintiff has right to institute the suit along with the second plaintiff. The plaintiffs have to establish their right and title over the suit property in their own at the time of trial. No prejudice would be caused to the defendant, if the first plaintiff is continued to proceed with the suit. There is no illegality and perversity in the order of the trial Court and the Civil Revision Petition is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, CMP (MD) No.3927 of 2018 is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Additional District Munsif,
Thirumangalam,
Madurai District.

Vsv
MK/RSK/SAR 2/17.09.2018/4P/2C

order made in
C.R.P. (MD) (PD) No.886 of 2018
23.08.2018