

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.No.2117 of 2014
and M.P.No.1 of 2014

The Commissioner,
Pallavapuram Municipality,
Having Office at Chrompet,
Chennai - 44.

.... Petitioner

Vs.

1.S.Nabib Khan
rep by his Power Agent K.Abdul Asalam

2.Shanthi Nagar Co-op Housing Society
rep by its Secretary,
Shanthi Nagarm Chrompet,
Chennai - 600 044.

3.Shanthi Nagar Residents Welfare Association
rep by its Secretary
Shanthi Nagar, Chrompet,
Chennai - 600 044. Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the Subordinate Judge, Tambaram dated 29.01.2014 passed in I.A.No.1278 of 2012 in O.S.No.39 of 2012.

For Petitioner : Mr.P.Srinivas

For Respondents : Mr.M.L.Ramesh (R1)
R2 - not ready in notice
Mr.M.Babu Muthu Meeran (R3)

O R D E R

Challenging the fair and final order passed in I.A.No.1278 of 2012 in O.S.No.39 of 2012 on the file of the Subordinate Court, Tambaram, the 3rd party viz., the Commissioner of Pallavaram Municipality has filed the above Civil Revision Petition.

2.The 1st respondent/plaintiff filed the suit in O.S.No.39 of 2012 for bare injunction as against the respondents 2 & 3.

In the plaint, the plaintiff has contended that the suit property in Survey Nos.453/2A1A11 and 454/1A1A measuring an extent of 11550 sq.ft. devolved on him and that the respondents 2 & 3 try to interfere with his possession and enjoyment of the property and therefore, he has filed the suit for bare injunction. The defendants/respondents 2 & 3 filed their written statement wherein it has been stated that no one is having any right or title or interest over the suit property, which means neither the plaintiff nor the defendants are having any right or title or interest over the suit property. However, the 2nd defendant has stated that the suit property is under his care and custody for the last 40 years for the functioning of the office of the 2nd defendant for putting up small office room and the remaining vacant space was utilized for conducting public functions. Based on the available pleadings, the trial Court framed issues and took up the matter for trial. At that stage, the petitioner viz., the Commissioner of Pallavaram Municipality filed an application in I.A.No.1278 of 2012 under Order 1 Rule 10 of the Code of Civil Procedure to get himself impleaded as a defendant in the suit. In the affidavit filed in support of the petition, the Commissioner has stated that the suit property vests with the Municipality and therefore, neither the plaintiff nor the defendants have any right or title over the same. Further, the Municipality has stated that the suit property is an approved layout of the year 1964 vide Approval No.113/1964. However, the plaintiff has disputed the averment stated in the affidavit filed in support of the petition. The trial Court, taking into consideration the case of both parties, dismissed the application. While dismissing the application, the trial Court has not given any acceptable reason for rejecting the application filed by the Municipality.

3.It is also brought to the notice of this Court that the patta issued in favour of the plaintiff was kept in abeyance pursuant to the pendency of the suit in O.S.No.39 of 2012. It is also pertinent to note that the Municipality has not produced any documents before the trial Court to establish their contentions. But however, the Municipality claimed that the suit property vests with them, which averment is also supported by the averment stated by defendants in the written statement. That apart, since the patta issued in favour of the plaintiff was also kept in abeyance, I am of the view that the Municipality is a proper and necessary party for proper adjudication of the suit.

4.In such view of the matter, the fair and decreetal order passed in I.A.No.1278 of 2012 in O.S.No.39 of 2012 are set aside and the application in I.A.No.1278 of 2012 stands allowed. The revision petitioner viz., the Commissioner, Pallavaram Municipality is impleaded as 3rd defendant in the suit.

5.The learned counsel for the 1st respondent/plaintiff submitted that since the Municipality is disputing the title of the plaintiff, liberty may be given to the plaintiff to file appropriate application to amend the plaint to include relief of declaration.

6.The learned counsel appearing for the defendants/respondents 2 & 3 as well as the learned counsel for the petitioner have no objection for amending the prayer sought for in the plaint by incorporating the prayer for declaration.

7.In view of the submissions made by the learned counsel on either side, liberty is given to the 1st respondent/plaintiff to file an application under Order 6 Rule 17 of the Code of Civil Procedure to amend the prayer in the suit by including the relief of declaration and if such an application is filed by the 1st respondent/ plaintiff, the defendants 1 to 3 shall not object to the same. The trial Court is directed to decide the suit in O.S.No.39 of 2012, on merits and in accordance with law, as expeditiously as possible.

8.With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

va

To

1.The Subordinate Judge, Tambaram

+1cc to Mr.M.L.Ramesh, Advocate SR.No.95972

+1cc to Mr.P.Srinivas, Advocate SR.No.96463

+1cc to Mr.M.Babu Muthu Meeran, Advocate SR.No.96950

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AD (CO)

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GM (03/12/2019)