



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.815 of 2015

WEB COPY

V.Kannan

... Petitioner/Petitioner/Plaintiff

vs.

1.D.Kamala

2.D.Mohan

3.D.Gurumoorthy

4.S.Veluchamy

.....Respondents/Respondents
/Defendants

5.C.Dheenadhayala Pandian

..... 5th Respondent/5th Respondent
/Proposed party

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the order passed in I.A.No.445 of 2014 dated 08.01.2015 passed by the learned District Munsif, Madurai Taluk in O.S.No.75 of 2014.

For Petitioner: Mr.V.Kannan
(Petitioner in person)

For R2 to R4 : Mr.K.Saravanan

For R5 : Mr.Ramakrishnan Viraraghavan
Senior Counsel
For Mr.B.Muruganandam

ORDER

The revision petitioner herein is the plaintiff in O.S.No.41 of 2011 as was originally numbered when the case was laid before the Principal District Munsif Court, Madurai, which was since transferred to the District Munsif Court, Madurai Taluk and renumbered as O.S.No.75 of 2014.

2.The plaintiff wanted to implead an additional defendant, for which purpose he filed I.A.No.390 of 2011, which later came to be renumbered before the transferee Court as I.A.No.445 of 2014. Vide the impugned order dated 08.01.2015, the trial Court dismissed the said petition. Challenging the same, the plaintiff has moved this Court with the present revision petition.



3.The minimum fact required to be resolved is: The plaintiff claims that he is a tenant of certain property that originally belonged to the defendants 1 to 4; On 06.01.2011, when he faced forcible dispossession, he laid a suit on the following day i.e. 07.01.2011 arraying only the defendants 1 to 4 as party defendants; later, it came to light that even on 06.01.2011, the defendants 1 to 4 had sold the property to one Deenadhayala Pandian and for impleading him he filed I.A.No.445 of 2014 (initially numbered as I.A.No.390 of 2011). This was resisted by the proposed party and the trial Court chose to dismiss the said application seeking impleadment of Deenadhayala Pandian as party defendant in the suit.

4.The reasonings for the dismissal are:

- a)that the plaintiff has made a statement in his affidavit that he is a pendente lite purchaser, which in fact was not;
- b)that there is no allegation made against Deenadhayala Pandian in the body of the plaint and therefore, impleading him is not necessary in the context of the plaint that is before the Court.

5.Heard Mr.V.Kannan/plaintiff in the suit who appeared in person and Mr.Ramakrishnan Viraraghavan, the learned Senior Counsel appearing for the proposed party.

6.This Court was informed that the building which is the subject matter of the litigation has been demolished. In these circumstances, the revision petitioner/plaintiff had laid I.A.No.214 of 2015 for amending the plaint seeking modification of his initial prayer of prohibitory injunction into one of restoration of the suit property, a relief more in the nature of mandatory injunction.

7.Mr.V.Kannan, argued that inasmuch as it has come to his knowledge that the proposed party was responsible for the demolition of subject matter of the suit, it is essential for him to implead him to sustain the suit. He also brought to the notice of the Court that under Order 1 Rule 10 C.P.C, the Court itself has got *suo motu* power to implead any party who it requires to be heard in an action before it.

8. Per contra, Mr.Ramakrishnan Viraraghavan, the learned Senior Counsel would argue that since I.A.No.214 of 2015, which the plaintiff has laid for amending the plaint, is still pending before the Court, and unless the plaint is amended, the petition to implead Deenadhayalan cannot be ordered. He also submitted that there is no impropriety in the order of the learned trial Judge and that this Court may go slow to interfere with the said order under Article 227 of the Constitution of India. It is also brought to the notice of this Court that even in I.A.No.214 of 2015, the revision petitioner has not sought any amendment to the body of the plaint but has only



9.The arguments advanced on one level can be considered casuistic but then the procedure being what it is, sometime it needs to be respected, especially when the parties consider that the procedural unfairness shall not prejudice them.

10.Viewing thus, this Court considers that the present I.A.No.445 of 2014, which the revision petitioner laid, is one stage too early and ideal thing would have been for him to file this impleading petition along with I.A.No.214 of 2015 are perhaps thereafter. Hence, this Court considers that there is no immediate necessity for this Court to interfere with the order of the trial Court made in I.A.No.445 of 2014 for the present.

11.In conclusion, this Civil Revision Petition is dismissed and the petitioner will be at liberty to bring any petition for impleading the proposed 5th defendant before the trial Court at appropriate stage of the proceedings before it. No costs.

Sd/-

Assistant Registrar (Writ)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa/ta

To

1.The District Munsif,
Madurai Taluk.

2.The Section Officer
V.R.Section, Madurai Bench of Madras High Court
Madurai.(2 Copies)

+1 CC to M/s.K. SARAIVANAN, Advocate (SR-19408[F] dated 08/10/2020)

+1 CC to M/s.V. KANNAN, Advocate (SR-19485[F] dated 08/10/2020)

C.R.P. (PD) (MD)No.815 of 2015

07.10.2020.

NA (CO)

NR (28/10/2020) 3P : 6C