



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD) Nos.543 and 726 of 2013

and M.P(MD) .Nos. 1 and 3 of 2013

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In C.R.P (MD) .No.543 of 2013

S.T.Balamurugan : Petitioner/Third party

Vs.

1.Karthik : 1st Respondent/Plaintiff

2.Karisalkulam Nadargal
Uravinmurai Sangam
rep., by its President,
Thangadurai : 2nd Respondent/1st Defendant

3.Thangadurai : 3rd Respondent/2nd Defendant

4.Kannapiran : 4th Respondent/3rd Defendant

In C.R.P (MD) .No.726 of 2013

S.T.Balamurugan : Petitioner/Third party/Third party

Vs.

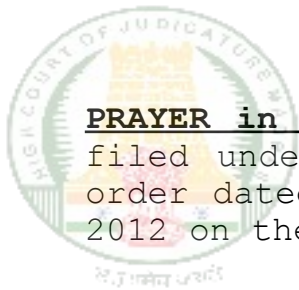
1.Karthik : 1st Respondent/Petitioner/Plaintiff

2.Karisalkulam Nadargal
Uravinmurai Sangam
rep., by its President,
Thangadurai : 2nd Respondent/1st Respondent
/1st Defendant

3.Thangadurai : 3rd Respondent/2nd Respondent
/2nd Defendant

4.Kannapiran : 4th Respondent/3rd Respondent
/3rd Defendant

PRAYER in C.R.P (MD) .No.543 of 2013: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.70 of 2012 on the file of the Subordinate Judge, ~~Madurai~~ and reject the plaint.



PRAYER in C.R.P(MD).No.726 of 2013: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 10.10.2012 passed in I.A.No.231 of 2012 in O.S.No.70 of 2012 on the file of the Subordinate Judge, Kovilpatti.

In both revisions:

For Petitioner : Mr.J.Barathan
For R1 : Mr.V.A.Dhana Aravinda Balaji
(R2 to R4 Given up)

COMMON ORDER

These two revisions are filed by a third party to the suit under Article 227 of the Constitution of India praying to interfere with vague proceedings in I.A.No.231 of 2012 in O.S.No.70 of 2012 on the file of the Sub Court, Kovilpatti and to strike off the plaint.

2.The said suit was laid *inter alia* for a decree of permanent injunction restraining the defendants, their agents, servants, expunged and expelled office bearers, and any other persons claiming under the first defendant Sangam from convening the special general body meeting of Karisalkulam Nadargal Uravinmurai Sangam without 21 days clear prior notice and also out of Karisalkulam on 14.10.2012 or on any other subsequent dates.

3.The first defendant is a Society registered under the Tamil Nadu Registration of Society Act, 1975 and the matter pertains to managing a certain School. In the suit, the plaintiff had moved I.A.No.231 of 2012 for an order of interim injunction on which, the trial Court ordered notice on 03.10.2012 and posted the matter on 10.10.2012. On 10.10.2012, notice was served on the defendants 1 to 3. Of three, the first defendant is the very Society. Since the defendants/ respondents did not appear before the Court, the Court set them ex-parte and allowed the petition. In other words, it would mean that the Court has passed an order of interim injunction as prayed for.

4.The learned counsel for the revision petitioner submitted that the petitioner was alleged to have been expelled from the Society by a void proceeding. Indeed in paragraph No.6 of the plaint, the plaintiff himself specifies the name of the revision petitioner, but without making him a party to the suit, he moved an application in I.A.231 of 2012 and obtained an order of interim injunction and thereby they kept the revision petitioner from participating in the affairs of the society. Hence, the petitioner has moved C.R.P(MD).No.543 of 2013 for setting aside the order of interim injunction in I.A.No.231 of 2012, since that order specifically intends to operate against the revision petitioner, but without he being in the party array. He also moved another civil



revision petition in C.R.P(MD).No.726 of 2013 to strike off the very plaint as an abuse and fraud on the process of Court.

5. Heard the learned counsel appearing on behalf of the revision petitioner briefly.

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6. *Prima facie* it appears that there is some merit in the submission of the learned counsel. When a party's name is specifically mentioned and the relief if granted, in turn to affect his right and interest, then it is only appropriate that he is arrayed as a party to defend the case. The prayer in the suit is ingeniously worded in that, among the various persons who shall be barred by an order of injunction, it also included expelled persons too, even without any of them in the party array. And, the expelled members cannot be represented by the Society.

7. In the prayer portion in I.A.No.231 of 2012, the name of the revision petitioner is clearly mentioned as one of the parties to be enjoined but without being arrayed him as a party. This strategy is plain and by unconscionable and is a sign of unfairness, by misuse of judicial process. The plaintiff very unfortunately has contrived a strategy to obtain an order of injunction against the person, who is not in the party array and without any notice to him.

8. Turning to the operative portion of the impugned order, it merely says thus:

"Respondent 1 to Respondent 3 Court notice served; Respondent 2,3 Registered post served. Respondent 1 Registered Post served through Respondent 2. Respondent 1 to Respondent 3 called absent. No representation. Set Exparte. Petition is allowed".

It is very obvious that the learned trial Judge has not even read the prayer portion in the injunction application in I.A.No.231 of 2012. If only he had read the prayer portion, he would have had the occasion to note that one of the persons to be enjoined is not even before the court, and that no notice was sent on him. Necessarily, the order of the trial court is not sustainable.

9. To avert any further miscarriage of justice, this Court, in exercise of its power under Article 227 of the Constitution of India read with Order I Rule 10(2) C.P.C directs the impleadment of the revision petitioner in O.S.No.70 of 2012. The necessary amendment in the plaint shall be made by the trial Court on receipt of the copy of this order and the revision petitioner will be the 4th defendant.

10. If the revision petitioner is so desirous, he can move the trial Court with an application under Order 39 Rule 4 of C.P.C. to vacate the order of injunction passed in I.A.No.231 of 2012. Since the suit itself is pending from 2012, the trial Court is required to



expedite the disposal of the suit upon the revision petitioner filing his written statement to the suit.

11.The learned counsel for the revision petitioner submits that the revision petitioner as 4th defendant in the suit, will file his written statement within 30 days from the date of receipt of a copy of this order.

12. If any additional time is required, the revision petitioner may move the trial Court showing the reason in terms of order 8 Rule 1 of C.P.C.

13.Both Civil Revision Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Cm/msa

To

The Subordinate Judge,
Kovilpatti.

+1 CC to Mr.T.R.JEYAPALAM, Advocate SR-45065.

C.R.P. (PD) (MD) Nos.543 and 726 of 2013

and

M.P (MD) .Nos. 1 and 3 of 2013

08.09.2020

DKS (CO)

CS (21.10.2020) 4P 3C