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W.M.P.No.1852 of 2022
in
W.P.No.19956 of 2021

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T.RAJA, J.
and
SATHI KUMAR SUKUMARA KURUP,J.

(Order of this Court was delivered by T.RAJA,J.)

In the pending Writ Petition No.19956 of 2021, M/s.Doshi Constructions, Partnership Firm, represented by its Partner Mr.Mehul Doshi has filed W.M.P.No.1852 of 2022 for impleading them as a party respondent and also to vacate the interim order dated 20.09.2021.

2.Mr.R.Parthasarathy, learned counsel appearing for the petitioner/impleading party submitted that the impleading applicant is the owner of the land in question. This fact has been explicitly and vividly admitted by the writ petitioner in paragraph No.17 of the counter filed in the impleading petition admitting that the impleading petitioner is at best a mere land owner in respect of the schedule property.



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3. Secondly, when the writ petitioner has admitted the fact that the impleading petitioner is the land owner of the suit property, as per the ratio laid down by the Hon'ble Apex Court in ***Aliji Momonji and Co., vs. Lalji Mavji*** reported in **(1996) 5 SCC 379** answering a question whether the landlord is a necessary or proper party to the suit for perpetual injunction against the Municipal Corporation for demolition of demised building that the landlord has a direct and substantial interest in the demised building before demolition of which notice under Section 351 was issued, the Hon'ble Apex Court has held that the land owner is a necessary and proper party.

4. Thirdly, the writ petitioner, knowing pretty well that the impleading petitioner is the land owner, ought to have impleaded as it has not been done, the impleading application has to be accepted by allowing the prayer, failing which unimaginable prejudice would be caused to the owner of the land.

5. In reply, Mr.K.V.Bhashyam Chari, learned Counsel appearing for the writ petitioner, vehemently opposing the aforesaid prayer,



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submitted that when the impleading party was not made as a party before learned Single Judge, insofar as the buildings and superstructures are concerned, the impleading party has got no interest at all, therefore, there is no need or necessity arisen to implead the impleading petitioner as one of the necessary parties.

6. We find some merits on the submission made by Mr.R.Parthasarathy, learned Counsel appearing for the petitioner/impleading party. When it is an admitted fact made by the writ petitioner in paragraph 17 of the counter affidavit filed responding to the impleading application that the impleading petitioner is at best a mere land owner in respect of the schedule property, it goes without saying that as per Section 58 of the Evidence Act, 1872, admitted facts need not be proved, such a situation clearly warrants this Court to allow this impleading petition.

7. Further, the legal position as explained by the Hon'ble Apex Court in the case of ***Aliji Momonji and Co., vs. Lalji Mavji*** reported in ***(1996) 5 SCC 379*** also supports the claim of the impleading petitioner that the landlord, in any suit relating to determination of the



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right, title and interest of the property, is a necessary and proper party.

8. Moreover, the impleading petitioner also has filed a Civil Suit in C.S.No.574 of 2010 before this Court for a decree ejecting the writ petitioner from the suit land. Therefore, for all these reasons, we are of the considered opinion that if for any reason, the pending civil suit instituted by the impleading petitioner in C.S.No.574 of 2010 is decreed, it may cause prejudice to take part in the present writ petition. Therefore, for the aforesaid reasons, the impleading petition in W.M.P.No.1852 of 2022 stands allowed.

9. Registry is directed to carry out necessary amendment in the cause title.

(T.R.,J.) (S.S.K.,J.)
22.03.2022
(1/2)

dm/srm



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