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CRP.(PD).No.805/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

CRP.(PD)No.805 of 2022
& C.M.P.No.4044 of 2022

Sivakumar
Director of Chennai Autolinks Private Ltd,
Plot No.90, Krishna Industrial Estate,
Mettukuppam, Vanagaram,
Chennai - 600 095.

... Petitioner

Vs.

1.V.Logeswari,
D/o.C.Venkatachalam

2.Udhayam
Deputy Tahsildar
Poonamallee Taluk
Poonamallee, Chennai - 600 056.

3.Yashwanth Doss
Taluk Surveyor
Poonamallee Taluk
Poonamallee, Chennai - 600 056.

4.Mr.Mohan
Village Administrative Officer
Vanagaram Village
Poonamallee High Road
Vanagaram, Chennai - 600 095.

... Respondents



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PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to Strike-off the Plaint in O.S.No.131 of 2020 on the file of the District Munsif Court, Poonamallee.

For Petitioner : Mr.C.Umashankar

For Respondents : Mr.Veerapathiran

ORDER

The present application is taken out by the 1st defendant in O.S.No.131 of 2020 for striking off the pleadings in the case. Earlier, the 1st defendant / revision petitioner has filed certain Writ Petition before this Court alleging that the plaintiff is in unauthorised possession of public road. This case was disposed of authorising the authorities concerned to remove the same. This is the backdrop of this litigation.

2.Learned counsel for the revision petitioner submitted that the present suit is filed after the disposal of the above said Writ Petition in W.P.No.10913 of 2020 on 19.02.2021. There were also certain interim orders at various points of time in the proceedings. Learned counsel for the respondents / Caveator / plaintiff in the suit submitted the suit was filed prior to the stay.



3.The suit is laid for bare injunction and besides the 1st respondent, the plaintiff has impleaded few other individuals by their names and seek to protect her possession. This Court makes it clear that the legal principle is that an occupant of the land can defend the possession against the whole world except the true owner and till the true owner arrives in the scene to evict a party in occupation, a third party cannot object to the same.

4.Learned counsel for the plaintiff would now intervene that the defendants 2 to 4 indeed are public servants, that they were smartly impleaded by their names and not by their office, and that this is the strategy evolved to outmanoeuvre the procedure and the orders passed by this Court in W.P.No.10913 of 2020. This Court does not intend to enter an immediate finding, but on going through the papers, it realises that the State of Tamil Nadu represented by the District collector of the concerned District is a necessary party, more so, in the context of the orders passed in the Writ proceedings. Therefore, this Court *suo motu* impleads State of Tamil Nadu, represented by the District Collector, Tiruvallur as the 5th defendant in the suit. The trial Court may apply its mind as to the need for the presence of the alleged public servants who are there in the party array by their names and if



they should be there any longer. This Court clarifies, an office, which is not a statutory authority is not a juristic person unless it is so declared by any statute. This revision is necessarily have to be disposed of based on the observation herein above made.

5.Learned counsel for the revision petitioner would now bring to the notice of the Court, that in the suit the plaintiff / 1st respondent has filed I.A.No.372 of 2020 for an order of interim injunction, and since the revision petitioner / 1st respondent had by then filed the present revision petition, he is stated to have circulated a memo to the trial Court seeking time. This memo though was recorded by the learned trial Judge in his order dated 10.03.2022, still it proceeded to set the 1st defendant exparte and the matter is posted for exparte evidence on 26.04.2022.

6.At one level this Court must appreciate that the learned trial Judge is playing the game by the Rules, but on the other hand, it would have been appreciable if the learned trial Judge has appreciated that procedural law has its inherent flexibility about it, that the nature of its application is to be measured on the basis of varieties of factors that may affect each particular case. What applies



to case-A need not necessarily apply to case-B, and every case has to be evaluated for its content and context for applying a particular provision of the procedure. While, this Court does not find fault with the learned judge, it also may not be able to sustain the ex-parte order it has passed.

7. This Court takes *suo motu* cognizance of this matter, and since both the counsel for the 1st defendant and the plaintiff are before the Court, it heard them and it is satisfied that the ex-parte order setting the 1st defendant ex-parte on 10.03.2022 in I.A.No.372 of 2020 shall go.

8. Accordingly, the said order is set aside. Subject to what is herein stated, the revision petition is disposed of. In the best interest of justice, the 1st defendant is given an opportunity to file a written statement within a period of 15 days from today. The learned trial judge is also required to advance a posting to an early date, after issuing notice to both sides, and dispose of the matter as expeditiously as possible. The plaintiff is now required to carry out necessary amendment in the original plaint before the trial Court, vis-a-vis impleadment of State of Tamil Nadu by this Court.

9. With the above direction, this Civil Revision petition is disposed of.



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Consequently, the connected C.M.P.No.4044 of 2022 is closed. No costs.

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kas

Index : Yes/No

Internet : Yes / No

Speaking /Non Speaking

To

The District Munsif Court
Poonamallee.



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N.SESHASAYEE, J.,

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