



O.S.A.No.217 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2022

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN,

O.S.A.No.217 of 2022

and CMP No. 12722 of 2022

Mrs. S. Vidhyadhari

.. Appellant

v.

M/s. Kalpana Foundations Pvt. Ltd.,
Rep. By its Managing Director,
Mr. K. Ramesh Kumar,
No.54/A, New No.152,
Periyar Pathai, Choolaimedu,
Chennai – 600 094.

... Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules under Clause 15 of Letter Patent to set aside the order dated 07.12.2021 in A.No.1733 of 2021 in C.S.No.27 of 2015.



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For Appellant : Mr. M.Kempuraj

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed by the learned Single Judge in Application No.1733 of 2021 in C.S.No.27 of 2015 the 2nd defendant has filed the above Original Side Appeal.

2. The 1st respondent-plaintiff filed the suit in C.S.No.27 of 2015 for recovery of a sum of Rs.3,01,35,000/- [Rupees three crores one lakh and thirty five thousand only] together with interest. The defendants filed their written statement and are contesting the suit. When the suit was taken up for trial, the 2nd defendant took out an application in A.No.1733 of 2021 to strike out the pleading in the suit as against her, as she was wrongly impleaded as 2nd defendant and for mis-joinder of parties in the suit. In the affidavit filed in support of the application, the 2nd defendant has stated that she has given a detailed reply to the notice issued by the 1st respondent-plaintiff, wherein she denied any transaction



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between her and the plaintiff. In these circumstances, the 2nd defendant contended that since she was not involved in the suit transaction, she is not a necessary party, hence the suit should be strike off. The application filed by the 2nd defendant was opposed by the 1st respondent-plaintiff on the ground that the 2nd defendant is also a party to the transaction, hence she is a proper and necessary party for proper adjudication of the suit.

3. The learned Single Judge, taking into consideration the case of both the parties, dismissed the application finding that there are specific averments mentioned in the plaint against both the defendants, hence the 2nd defendant alone cannot be said to be not necessary party and suit can not be dismissed for mis-joinder of parties.

4. On a perusal of the plaint averments it is clear that there are averments made by the 1st respondent-plaintiff as against both the defendants. Hence, the defence taken by the appellant-2nd defendant to the effect she as not involved in the transaction can be decided only after the completion of trial. That apart, when the suit was filed as early as in the year 2015, the present application has been filed by the 2nd



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defendant after a lapse of 6 years. In these circumstances, we do not find any merits in the appeal. Accordingly, the Original Side Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[M.D., J.] [S.M., J.]
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Index : Yes/No

Speaking Order/Non Speaking Order

Rj



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