



A.No.940 of 2023

A.Nos.940 & 2230 of 2023

in

C.S.No.194 of 2022

Reserved on 23.06.2023	Delivered on 10.07.2023
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K.KUMARESH BABU,J.

These applications have been filed seeking implementation of various persons as defendants in the Suit.

2.Inspite of notices having been ordered on the proposed parties, it could be seen that some of the respondents have not been served, but however, the learned counsel for the respondent/plaintiff had seriously objected to the impleadment of the proposed parties to the Suit by contending that they are neither the proper and necessary parties to the Suit as that the plaintiff is a successor in interest, he having purchased the property from the predecessor of the people sought to be impleaded.

3.The learned counsel appearing for the applicant would contend that the plaintiff herein is a purchaser of the property from the



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proposed parties who are the predecessors. He would submit that he had initiated a Suit as against his mother and sister and had sought for a declaration as against their action in selling the property in which they did not have a right. He would further submit that now presently a Second Appeal is pending before this Court in which they are parties. He would submit that he is confident of being successful in the Second Appeal and if an order is passed in his favour, it would definitely affect not only the interest and rights of the plaintiff in the Suit and also proposed parties. Hence, he would submit that this Court will have to await the service of notice to the proposed parties that had been already ordered. He would also submit that if the Suit is proceeded without them as being parties to the Suit then it would definitely cause prejudice to them.

4.Countering his argument, the learned counsel appearing for the respondent/plaintiff would submit that these applications have been filed only to protract the proceedings. The proposed parties are close relatives of the applicants, but however, they are purposely given wrong address and also had impleaded a deceased person and



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they have taken a further application to implead the legal heirs of the said deceased person. This according to them is a willful conduct of the applicant to protract the proceedings. He would further submit that the Suit filed by the applicant as against the proposed parties, who are the vendors/predecessors of the property that is subject matter of this Suit. Suit had been dismissed for default. Thereafter, the respondent/plaintiff had purchased the property. After 10 years, the applicants have taken out the application to restore the said Suit and the said Suit came to be taken back on file and this respondent/plaintiff impleaded himself and contested the said Suit. The vendors/predecessors of the respondent/plaintiff had remained *exparte*, as they did not have any further interest in the property. Thereafter, the said Suit came to be dismissed on merits, against which the applicants have filed an Appeal Suit which also got dismissed. After filing of the present Suit, the applicants have moved this Court to file a Second Appeal with an application to condone the delay of more than three years, the delay has still not been condoned by this Court. Even in the Appeal Suit, the vendor/predecessors have not entered appearance. Therefore, he would submit that even if



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notice is ordered in the present Suit, they will not be appearing in the Suit and therefore, he would submit that it would be a wasteful exercise in proceeding this applications any further, as it would also protract the disposal of the present Suit and hence, he prays that the application should be dismissed.

5.I have heard the rival submissions made on either side and perused the materials placed on record.

6.The claim of the applicants is that the proposed parties are proper and necessary parties to the Suit. The applicant is the defendant in the Suit. It is for the plaintiff to implead the necessary defendants for the relief that he seeks for. If the defendant fails to implead proper and necessary parties to a Suit, he would suffer as this Court would refuse to grant the relief as prayed for, if such proper and necessary parties have not been impleaded in deciding the *lis* arising out of the Suit. The applicant being the defendant would not be entitled to hear to claim that who are the proper and necessary parties to decide the *lis*. Further from the facts of the case, it could be seen



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that the proposed parties, who were directly to be affected in the Suit filed by the applicant, had failed to enter appearance and have allowed them to set *ex parte*. The said conduct of the proposed parties is assumed on the fact that the property in the Suit had already been transferred by them in favour of the plaintiff in the Suit and that they did not have any further interest in the Suit Schedule property.

7. In view of the aforesaid findings and reasonings, I am of the considered view that the present applications at the behest of the defendants need not be adjudicated any further.

In fine, the Applications are dismissed. However, there shall be no order as to costs.

10.07.2023

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Index : Yes/No

Internet: Yes/No



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Pre-delivery Judgment in
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