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A.No.2715 of 2023

A.No.2715 of 2023
in
C.S.No.535 of 2019

K.KUMARESH BABU, J.

This application has been taken out by the plaintiff to implead the respondents 9 to 11 herein as the defendants 9 to 11 in the above suit.

2. Mr.K.Kabir, learned Senior Counsel and M/s.K.Padma, learned counsel is appearing on behalf of D1 to D3.

3. The learned counsel appearing for the applicant/plaintiff would submit that the applicant association viz., Regal Palm Garden Apartment Owners Association has about 400 flat owners and that they have been using the suit schedule property as egress and ingress property.

4. The learned counsel appearing for the applicant/plaintiff would submit that the property which they had the egress and ingress had been sold by the 8th respondent herein in favour of the 11th respondent through the 9th & 10th respondent.



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5. The learned counsel appearing for the applicant/plaintiff would further submit that if a judgement is passed in the suit in their favour, it would affect the interests of them, therefore there should be a proper and necessary party at the time of adjudication of the suit.

6. The learned counsel appearing for the applicant/plaintiff would also rely upon the Encumbrance Certificate issued by the Registration Department in respect of the sale of the property by the 10th respondent in favour of the 11th respondent.

7. The learned counsel appearing for the applicant would further submit that the property had been sold by the 10th respondent as an agency of the 9th respondent for recovery of dues of the 9th respondent herein and that by sale of the said property it would affect the claim of the applicant/plaintiff in the suit.

8. Countering the arguments Mr.K.Kabir, learned Senior Counsel would submit that the claim of the applicant/plaintiff is false. He would further submit that even if the land as alleged by the applicant/plaintiff has



been sold, it would not affect the interest of the Members of the Applicant's Association.

9. This was seriously disputed by the learned counsel appearing for the applicant/plaintiff.

10. Therefore, this Court vide order dated 27.06.2023, had appointed an Advocate Commissioner and directed him to visit the property and file a sketch relating to the egress and ingress available to the applicant/plaintiff.

11. The learned Advocate Commissioner had also filed a detailed report indicating the egress and ingress available to the Members of the Applicant's Association. However, he has also indicated that one of the entrance has been blocked by way of building a brick wall and also the OSR Land had been locked by the grill gate. He had also annexed the photographs of the same.

12. It is pertinent to note that the applicant/plaintiff had relied upon the Encumbrance Certificate indicating a sale of portion of the land in S.No.329 through which the applicant claims to have egress and ingress.



A.No.2715 of 2023

13. Even though in the said application seems to have been made on 27.04.2023, the learned counsel appearing for the applicant/plaintiff had not produced a certified copy of the said document to further substantiate his claim.

14. A perusal of the Encumbrance Certificate would show the various boundaries to the property that had been sold by the 10th respondent in favour of the 11th respondent. The southern boundary of the property that had been sold is a part of the property belonging to the 8th respondent herein.

15. The extent of property that had been sold under the Sale Deed is said to be 39,421 Sq.ft. The plaintiff had not placed any materials as to what is the total extent of the property in S.No.329.

16. Further from the boundaries given in the Encumbrance Certificate, it remains that a portion of the property has been held by the 8th respondent itself.

17. It is also pertinent to note that the Hon'ble Division Bench of this



A.No.2715 of 2023

Court in OSA.Nos.10 and 11 of 2022, in its order dated 05.04.2023 had directed the *status quo* to be maintained with regard to the egress and ingress of the Members of the Applicant's Association through the said Survey number. Further a direction has also been issued by the Hon'ble Division Bench of this Court to dispose of this suit within a period of six (6) months.

18. In such circumstances, if the application is going to be allowed, it only further delay the disposal of the Civil Suit. Further in view of the findings and reasoning that the applicant/plaintiff had not substantiated by producing the relevant documents, I am of the view that the respondents who are sought to be impleaded as the defendants are not proper and necessary party to the suit. Hence, the application stands dismissed. No cost.

30.06.2023

rgm

Neutral Citation: Yes/No

Index :Yes/No

Internet : Yes/No

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