



A.No.2954 of 2022  
in C.S.No.292 of 2020

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**R.N.MANJULA, J.**

This application has been filed to implead the applicant / third party as the fifth defendant in the above Civil Suit.

2. The applicant is a third party who claims to be in possession of the suit property.

3. The learned counsel for the applicant / proposed party submitted that the first respondent / plaintiff has filed a suit for the relief of declaration in respect of the sale deed dated 03.10.2019 executed by the first defendant through the second defendant in favour of the third defendant and for permanent injunction restraining the defendants 1 to 3 from interfering with the possession of the plaintiff; even according to the first respondent / plaintiff the superstructure in the suit property has been put up by the applicant / proposed party as per the agreement dated 04.07.1978; hence the applicant who in possession of the suit property is a necessary party in respect of the relief of permanent injunction.

4. The first respondent / plaintiff has filed the counter by stating that the applicant is a tenant under the first respondent and he is not a necessary party to the proceedings in respect of title between the plaintiffs and the defendants; the first respondent / plaintiff has already filed a suit in O.S.No.5573 of 2019 for ejecting the applicant and hence the applicant / proposed party has to put forth his defense only in that suit and hence he is not a necessary party to the current proceedings.



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5. The fourth respondent / third defendant had also filed a counter by stating that the applicant is neither a necessary party nor a proper party to the suit and the applicant does not have any semblance of right or interest in the suit schedule property.

6. From the submissions of the respective parties, it is clear that the applicant is in possession of the suit property. In fact the first respondent/plaintiff himself has filed a suit in O.S.No.5573/2019 before the XIX Assistant City Civil Court, Chennai for ejectment of the applicant from the suit property. So far this suit is concerned this is to resolve the title dispute between the plaintiff and the defendants. It is stated by both the plaintiffs and the defendants that if at all the applicant claims any right over the suit property, he can file an obstruction petition, if any, under Order 21 Rule 101 C.P.C. at the time of executing the decree that might be obtained in this suit and he need not get himself impleaded as a party.

7. Though it is true that a suit has been filed in O.S.No.5573 of 2019 against the applicant / proposed party and this suit is in respect of the title dispute between the plaintiffs and the defendants, the plaintiff has also sought a relief in respect of possession. Since the applicant has claims physical possession over the suit property and that was not denied by the first respondent / plaintiff, the applicant can be added as a party to proceedings irrespective of the pending suit in O.S.No.5573 of 2019. In case O.S.No.5573 of 2019 is decreed in favour of the plaintiff, it is open to the first respondent / plaintiff to execute such decree for recovery of



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possession irrespective of this suit and at that stage he can even to struck off the applicant the applicant / proposed party from the suit. In order to avoid any technical difficulty, I feel it is appropriate to allow the application and allow the applicant to get impleaded as a party to the proceedings.

8. In view of the above stated reasons this application is allowed. However, liberty is granted to the first respondent / plaintiff for seeking to struck-off the applicant from this suit, in the event of suit in O.S.No.5573 of 2019 is allowed.

**11.07.2023**

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