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C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

S.M.Fathima

... Petitioner

Vs.

1. R.Arunkumar
2. S.M.Sulthan Moideen

...Respondents

Civil Revision Petition filed under Article 227 of the Code of Civil Procedure to set aside the fair and decretal order dated 24.03.2023 made in I.A.No.4 of 2021 in O.S.No.2389 of 2020 passed by the learned VIII Assistant Judge, City Civil Court, Chennai

For Petitioner : Mr. K.Ezhumalai

ORDER

The present Civil Revision Petition filed under Article 227 of the Code of Civil Procedure to set aside the fair and decretal order dated 24.03.2023 made in I.A.No.4 of 2021 in O.S.No.2389 of 2020 passed by the learned VIII



C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

Assistant Judge, City Civil Court, Chennai

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2. The brief facts of the case as averred by the petitioner is that the petitioner, who is the absolute owner of the subject mentioned property had orally made an agreement on 01.02.2018 with the 2nd respondent for maintenance of the said property. While that being the case, the 2nd respondent entered into an rental agreement on 01.02.2018 with the 1st respondent and the 1st respondent filed a suit in O.S.No.2389 of 2020 seeking permanent injunction restraining the 2nd respondent, his men, agents, servants, legal heirs, administrators in any manner from interfering or trespassing or disturbing the peaceful possession and enjoyment of the rental premises of suit. Since the 2nd respondent is hospitalised till now, the entire legal proceedings are to be faced by the petitioner. Therefore, the petitioner filed I.A.No.4 of 2021 to implead him as 2nd defendant in the main suit and the same was dismissed, as against the same, the petitioner has preferred the present Civil Revision Petition.

3. The learned counsel for the petitioner submits that the 1st respondent had filed a suit in O.S.No.2389 of 2020 before the learned VII Assistant Judge, City Civil Court, Chennai seeking permanent injunction restraining his



C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

men, agents, servants, legal heirs, administrators in any manner from interfering or trespassing or disturbing the peaceful possession and enjoyment of the rental premises of suit. Further, in the said suit, the petitioner, who is the owner of the property has not been included as a party, therefore, the petitioner filed I.A.No.4 of 2021 and the said application was dismissed, which is erroneous.

4. The learned counsel for the petitioner further submits that the learned Judge failed to note that the non-impleadment of the petitioner, who is the proper and necessary party, will result in the suit being fatal. The petitioner, being owner of the property and who was in lawful possession and enjoyment of the subject property is a just and necessary party, hence, balance of convenience is in petitioner's favour, thereby pleaded to allow the present petition.

5. Heard the learned counsel for the petitioner and perused the documents placed on record.

6. It is an admitted fact that the petitioner has not entered into rental



C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

agreement with the 1st respondent. Further, the petitioner has entrusted the subject mentioned property to the 2nd respondent for maintenance only that too by way an oral arrangement. Therefore, the 1st respondent has preferred a Suit to evict him only under due process of law. In the meantime, the petitioner, who is not a party to the rental agreement, merely because he is the owner, has preferred I.A.No.4 of 2021 for impleadment.

7. It is pertinent to point out that the **Hon'ble Apex Court in the case reported in (2005) 6 SCC 733 [Kasturi Vs. Uyyamperumal and others]** has held that two tests are to be satisfied for determining the question, who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party. Relying upon the said judgment mentioned supra, the court below has rightly applied the tests and dismissed the I.A.No.4 of 2021 dated 24.03.2023.

8. On a perusal of the records as well as order passed by the court below in I.A.No.4 of 2021 dated 24.03.2023 it is seen that the issue involved in O.S.No.2389 of 2020 is to grant injunction and evict the 1st respondent only



C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

under due of process of law. Though the petitioner is the owner of the subject mentioned property, the rental agreement is between the respondents and the said prayer is also as against the 2nd respondent, for which, the petitioner, who is the owner, is the un-necessary party to the proceedings, therefore, the court below has rightly rejected the prayer of the petitioner to implead as proposed 2nd defendant. Further, it is a settled position of law that the 1st respondent / plaintiff is the dominus litus and nobody can be impleaded in the suit against the wish of the plaintiff.

9. In view of the above, the order passed by the court below does not require any interference. The learned VIII Assistant Judge, City Civil Court, Chennai is directed to proceed with the trial and dispose of the suit as expeditiously as possible. The parties are directed not to seek unnecessary adjournment.

Accordingly, this Civil Revision Petition is dismissed at the stage of admission. No costs. As a sequel, connected miscellaneous petition shall stand closed.

19.07.2023



C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd

To

The VIII Assistant Judge,
City Civil Court, Chennai

V.BHAVANI SUBBAROYAN, J.,

ssd



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C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

C.R.P.No.2409 of 2023 &
C.M.P.No.15082 of 2023

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