



C.R.P.(PD)(MD).No.436 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).(PD).No.436 of 2015

H.P.Satheesh

Represented by his General Power Agent

N.Devaraj

...Petitioner

-VS-

Narayanan

... Respondent

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 23.09.2014 made in I.A.No.768 of 2010 in O.S.No.212 of 2009 on the file of the learned District Munsif, Kulithalai.

For Petitioner

: Mr.N.Shanmugaselvam

For Respondent

:.Mr.K.Govindarajan

ORDER

The plaintiff is the revision petitioner. He had filed O.S.No.212 of 2009 on the file of the District Munsif Court, Kulithalai for the relief of



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permanent injunction.

2.The defendant had filed a written statement with a counter claim seeking recovery of possession. The plaintiff had filed I.A.No.768 of 2010 to exclude the counter claim of the defendant and to direct him to file a separate suit. This application was filed by the plaintiff primarily on the ground that the defendant has not chosen to implead his brothers and sisters and therefore, the counter claim was not maintainable.

3.The said application was dismissed by the trial Court. Challenging the same, the present civil revision petition is filed.

4.According to the learned counsel appearing for the revision petitioner, the defendant had contended that the suit schedule properties belong to his father by way of a registered settlement deed said to have been executed by his wife Kuppammal on 27.09.1935. It is also an admitted fact that the defendant's father Sethumadava Rao had passed away leaving behind the defendant and his other brothers and sisters. Therefore, without impleading the brothers and sisters, the defendant would not be entitled to seek recovery of possession. The trial Court had dismissed the said application on the ground that the counter claim does not exceed the pecuniary jurisdiction.



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5. According to the learned counsel for the revision petitioner/plaintiff, the trial Court has not considered the issue of non-joinder of necessary parties and has proceeded to dismiss the application solely on the ground that the counter claim is within the pecuniary jurisdiction.

6. Per contra, the learned counsel appearing for the respondent/defendant had contended that seeking recovery of possession, the impleadment of other brothers and sisters are not necessary. Their impleadment would arise only in cases where the prayer for declaration of title is sought for.

7. A perusal of the order impugned in the revision petition indicates that the trial Court has dismissed I.A.No.768 of 2010 solely on the ground that it is within the pecuniary jurisdiction. However, this Court is of the view that impleading siblings of the defendant would arise only if the defendant seeks declaration of title that he is the absolute owner of the property. In the written statement, the defendant admits that with the consent of his brothers and sisters, he has leased out the properties to a third party. In such an event, non-impleading of other brothers and sisters cannot be an impediment for the trial Court to consider the counter claim on merits. In paragraph No.22 of the reply statement, the plaintiff has raised a



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contention that the counter claim is not maintainable without impleading the other legal heirs of Sethumadava Rao. The issue of non-joinder of necessary parties may also be considered by the trial Court at the time of trial.

8. With the above said liberty, this Civil Revision Petition stands dismissed. No costs.

07.09.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1. The District Munsif, Kulithalai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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