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C.R.P.No.369 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.369 of 2023
and CMP.No.3043 of 2023

B.L.Saravanan
Regional Manager
Himachal Pradesh Horticulture Marketing &
Processing Corporation Limited
No.34/1A-3, Ennore Express High Road
Thiruvottiyur
Chennai - 600 019.

... Petitioner

Vs

1.Mookan @ R.K.Arunachalam
S/o. Ramar
R.M.Fruits
T.B.93, Anna Fruit Market
Koyambedu
Chennai - 600 092.

2.The Regional Manager (HQs)
Himachal Pradesh Horticulture Marketing &
Processing Corporation Limited
Nigam Vihar
Shimla - 171 002
Himachal Pradesh.



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3. The Secretary to Government
Government of Himachal Pradesh

Nigam Vihar

Shimla - 171 002

Himachal Pradesh

... Respondents

[No relief is claimed against 2nd & 3rd respondents]

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 27.07.2022 in I.A.No.3 of 2020 in O.S.No.46 of 2020 on the file of the learned XI Assistant City Civil Judge, Chennai.

For Petitioner : Ms.P.G.Aishwariya

For Respondents : Mr.O.G.Dhilip Roshan for R1
R2 & R3 [Given up]

ORDER

This civil revision petition arises against the order in I.A.No.3 of 2020 in O.S.No.46 of 2020 on the file of XI Assistant City Civil Court at Chennai.

2. The suit in O.S.No.46 of 2020 is filed by the plaintiff/first respondent herein as against the Regional Manager, Himachal Pradesh Horticulture Marketing and Processing Corporation Limited (hereinafter 'HPMC') naming him as the first defendant and the Regional Manager (HQs),



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HPMC, Shimla, Himachal Pradesh as the second defendant. The relief sought for in the suit is for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of suit schedule mentioned property without following the due process of law.

3. The plaint proceeds that the plaintiff became a tenant under the first defendant in 2004 on the strength of a licence agreement and he continued his tenancy without any default in payment of rent till July 2019. Thereafter, in 2015, the first defendant demanded exorbitant monthly rent from the plaintiff with an intention to vacate the plaintiff and give the possession to a third party. On that ground, he caused disturbance to the plaintiff's tenancy in the suit property. The plaintiff fearing dispossession, on 03.09.2015 had lodged a complaint against the first defendant. Thereafter, the plaintiff refused to pay the enhanced rent demanded by the first defendant. Taking note of the fact that the plaintiff had defaulted in payment of monthly rent and licence fee, the first defendant issued a notice to the plaintiff on 23.11.2019 asking the plaintiff to vacate the said property. To which, the plaintiff caused a reply on 17.12.2019. Fearing that the plaintiff will be dispossessed at any moment from the suit property, he came forward with the



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suit in O.S.No.46 of 2020.

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4. Pending the suit, an application in I.A.No.3 of 2020 was taken out by the plaintiff under Order 1 Rule 10 of Code of Civil Procedure seeking to implead the 'Secretary to Government, Government of Himachal Pradesh' as the third defendant in the suit. The reason stated in the affidavit of the implead application is that the State of Himachal Pradesh is a proper and necessary party to the suit. It is pertinent to point out here that the very affidavit states that the licence agreement was only between HPMC and the plaintiff. The plaintiff has also conceded that he had not filed any suit against the Government of Himachal Pradesh.

5. The learned Trial Judge issued notice in the said application and since the civil revision petitioner/1st defendant did not file a counter, they were set exparte in the application. Having done so, the learned Judge did not go into the aspect of examining whether the Government of Himachal Pradesh is a proper and necessary party to the proceedings. However, the learned Trial Judge in the impugned order, went on to hold that whether the Government of Himachal Pradesh is a proper or necessary party will be



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decided at the end of the trial and allowed the I.A.No.3 of 2020.

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6. Challenging the said order dated 27.07.2022 in I.A.No.3 of 2020, the present civil revision petition is filed by the first defendant.

7. Heard Ms.P.G.Aishwariya for petitioner and Mr.O.G.Dhilip Roshan for first respondent.

8. Ms.P.G.Aishwariya would contend that proceedings have been initiated as against the first defendant on account of the fact that the first defendant had entered into a licence agreement with the plaintiff. She would state that the Government of Himachal Pradesh is neither a proper nor necessary party to the proceedings. She would submit that even if the counter was not filed by this defendant, the trial Court ought to have considered if there is any adjudication involving the proposed party in the suit. She argued the trial Court had failed to take an attempt.

9. Per contra, Mr.O.G.Dhilip Roshan would submit that the plaintiff was constrained to file an application in I.A.No.3/2020 to implead the State



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of Himachal Pradesh only on account of the counter in I.A.No.2 of 2020 that had been filed by the civil revision petitioner to the effect that HPMC is a wholly owned subsidiary of Himachal Pradesh and taking a clue from the counter, the said I.A.No.3 of 2020 is filed.

10. I have carefully gone through the records. For the purpose of impleading the party to the proceedings, the Court must come to a conclusion that the proposed party is necessary for adjudication of the matters involved in the suit. Furthermore, if the proposed party is not a necessary party, but a proper party to the proceedings, even then an application under Order I Rule 10 is maintainable. Whether the proposed party is a proper or necessary to the proceedings, has to be decided before the application to implead is allowed. Unless and until the person is a proper and necessary party, the jurisdictional fact necessary for impleading the said party does not arise.

11. Here is a case where HPMC is a company registered under the Companies Act and having its separate corporate identity. It is a legal person capable of being sued or sue any person in its own name under the Code of Civil Procedure. Looking at the counter filed in I.A.No.2 of 2020



only shows that the first defendant had taken a plea that HPMC is a subsidiary of the State of Himachal Pradesh and it was not pleaded that the Government of Himachal Pradesh must be made as a party to the suit. In fact, the counter specifically states that HPMC is a Government of Himachal Pradesh undertaking, and the share capital of HPMC is fully subscribed by the State of Himachal Pradesh.

12. In the present suit, the relief sought for is as against the defendants 1 and 2, under whom the plaintiff fears that he would be dispossessed. For proving this cause of action, the share holder of HPMC namely the Government of Himachal Pradesh is neither a proper party nor a necessary party to the suit. The findings of the learned Trial Judge was that no prejudice would be caused to the civil revision petitioner/first defendant, by impleading the Government of Himachal Pradesh, is no order at all.

13. As discussed above, it is not a question of prejudice which works while impleading a party to the suit. It is the duty of the Court to come to a conclusion that the person/entity who is sought to be impleaded is a proper or necessary person to the said suit proceedings, before impleading him/her or



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any entity, as the case may be . That exercise has not been done. I am convinced that the Government of Himachal Pradesh is neither proper nor necessary party to the suit in O.S.No.46 of 2020. Hence, I have no other option than to set aside the order dated 27.07.2022 passed by the learned XI Assistant Judge, City Civil Court, Chennai in I.A.No.3 of 2020 in O.S.No.48 of 2020.

14. In the result, the civil revision petition is allowed and the order dated 27.07.2022 passed by the learned XI Assistant Judge, City Civil Court, Chennai in I.A.No.3 of 2020 in O.S.No.48 of 2020 is set aside. Accordingly, I.A.No.3 of 2020 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2024

Index:Yes/No
Neutral Citation : Yes / No
Speaking order / Non-speaking order
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To:

- 1.The District Munsif, Perambalur.
- 2.The Section Officer,
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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