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CRP.No.1596 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CRP.No.1596 of 2022

and

CMP.No.8020 of 2022

R.Kulandhaivel

... Petitioner

Vs.

Karunakaran

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.01.2022 made in IA.No.214 of 2018 in OS.No.290 of 2017 on the file of the Additional District Munsif, Namakkal and allow this Civil Revision Petition.

For Petitioner : Mr.S.Saravanakumar

For Respondent : Mr.R.Narayanan

ORDER



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This Civil Revision Petition has been filed as against the order passed in IA.No.214 of 2018 in OS.No.290 of 2017 on the file of the Additional District Munsif, Namakkal, wherein the respondent herein has filed a petition before the trial Court to implead the proposed respondents in the main suit and the petition was allowed. Challenging the said order, the present Civil Revision Petition is filed.

2. The petitioner is the defendant in the main suit. The respondent has filed a suit for the relief of permanent injunction as against the defendant. While pending the suit before the trial Court, the respondent herein has filed a petition for appointing an Advocate Commissioner to inspect the suit property. The proposed parties made objections and thereby the Commissioner filed a memo. Thereafter, the respondent has filed a petition to implead the proposed parties as necessary parties to decide the claim alleging that they have objected to measure the suit property through Commissioner. The proposed parties are no way connected to decide the case since the case is only for the relief of permanent injunction as against the petitioner herein. Only because they made objection, they cannot be made as parties but the



trial Court allowed the petition and implead them as proposed parties.

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3. According to the respondent, he has filed the suit for the relief of permanent injunction. While pending the main suit, an Advocate Commissioner was appointed to inspect the suit property and at the time of inspection, the proposed parties have not allowed the inspection by way of raising objection that they are in possession of the property and thereby the respondent has filed the present petition, to implead them as parties to the suit.

4. Before the trial Court, no oral or documentary evidence was adduced on either side. The trial Court after hearing both sides allowed the petition and hence, the present petition is filed.

5. The learned counsel for the petitioner would contend that the respondent has filed the suit only for bare injunction and there is no cause of action as against the proposed parties and only because they made objection for the inspection of the Commissioner, they cannot be said as proper and



necessary parties. However, the trial Court, without considering the same allowed the petition. Therefore, the order passed by the trial Court is liable to be set aside.

6. In support of this contention, the learned counsel for the petitioner has relied on the judgment of ***K.Purushothaman and others, Vs. Ponnusamy and others***, reported in ***2020 SCC Online Mad 20834***.

7. The learned counsel for the respondent/plaintiff would contend that the respondent has filed the suit for the relief of permanent injunction before the trial Court. During pendency of the suit, he has filed an application for appointment of the Commissioner. Subsequently, the Commissioner was appointed by the trial Court and while the Commissioner was inspecting the suit property, the proposed parties objected to measure the property and they claimed the property and hence, they also to be heard by impleading them as parties to the suit. The Commissioner also filed a memo before the trial Court to the effect that the proposed parties objected to measure the property and therefore, in order to complete disposal of the case, the respondent's presence



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is essential. The trial Court also after elaborate discussion allowed the petition

and therefore, the present petition is liable to be dismissed.

8. This Court heard both sides and perused the records.

9. It is an admitted fact that the defendant is the President of the proposed party i.e., above Trinity Academic Metric Higher Secondary School and already he was made as a party as defendant in the suit on his personal capacity. Now, when the suit property was inspected through Commissioner the proposed party objected the Advocate Commissioner to inspect the property and to that effect the Commissioner has also filed a memo. Since the proposed parties claiming some interest over the property, it is appropriate to implead them as one of the parties and no prejudice would be caused to the petitioner by impleading them as parties.

10. As far as the judgment relied upon by the petitioner ***K.Purushothaman and others, Vs. Ponnusamy and others*** is concerned, this Court is of the view that the same is not applicable to the facts of this case. It



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is admitted fact that the proposed parties made objection while inspecting the Commissioner and also the parties are claiming the pathway and therefore, in order to decide the claim, the proposed parties are also necessary parties. Therefore, the order passed by the trial Court is in order and no interference is warranted.

11. In view of the above, this Court is of the opinion that this Civil Revision Petition has no merits and it is deserved to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
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To

The Additional District Munsif, Namakkal.



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P.DHANABAL., J.
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