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C.R.P.(PD)No.2997 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2997 of 2022

and

C.M.P.No.16212 of 2022

1.Revathi

2.Venkatalakshmi

3.M.A.Pazhani

4.Selvaraj

.. Petitioners

Vs.

1.S.Anandan

2.S.Hema Malini

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 01.08.2022 passed in I.A.No.1 of 2022 in O.S.No.6542 of 2021 on the file of the XIX Assistant City Civil Court at Chennai.

For Petitioner : Mr.L.Prabakar

For R1 : Mr.S.Nedunchezhiyan

For R2 : Mr.V.Illanchezian



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ORDER

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The case of the plaintiff is that he was introduced by the 5th defendant/Advocate to the 1st and 4th defendants for the purpose of effecting mutation of revenue records for the properties belonging to the 1st and 4th defendants. As the amounts were not paid, he instituted a suit for recovery of sum of Rs.1,17,231/- together with an interest at the rate of 24% per annum from the date of plaint till the date of realization.

2. The plaintiff had pleaded that in the 1st week of June 2019, the 1st, 4th and 5th defendants had engaged him for rendering the aforesaid services. He had successfully completed the service and had incurred an expense of Rs.88,000/- towards the same. Charging 24% interest on the said amount, he demanded Rs.29,231/- towards interest.

3. On being served with the summons, all the defendants put in an application in I.A.No.1 of 2022 seeking rejection of plaint as according to them they had never engaged the services of the plaintiff.



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4. They would plead that they had engaged the 5th defendant in their professional capacity and they have no privity of contract with the plaintiff. Therefore, they sought for rejection of plaint.

5. The learned Trial Judge, after going through the plaint, came to the conclusion that whether there is a privity of contract between the plaintiff and the defendants will have to be found only at the time of trial. Therefore, he dismissed the application with the costs of Rs.3,000/-. Challenging the same, the present revision has been filed.

6. The position of law is very clear and has been laid down by this Court in the judgment reported in ***L.Venkatesan vs. S.K.Puniyakodi [(2002) 2 CTC 449]***. This Court has held that, unless and until, the plaint discloses a cause of action against all the defendants, it is not maintainable against all. If the cause of action is pleaded only against certain defendants, then, the plaint can be continued insofar as those defendants are concerned and insofar as the remaining defendants are concerned, their names would have to be struck off from the plaint.

7. Applying the law laid down by the said precedent to the facts of the



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present case, I find that the plaintiff has specifically pleaded regarding raising of invoices for the 1st, 4th and 5th defendants. However, there is no such averment that the 2nd and 3rd defendants had engaged the services of the plaintiff. Therefore, the plaint cannot be continued as against the 2nd and 3rd defendants are concerned.

8. I am alive to the fact that the application has been filed under Order VII Rule 11 of the Code of Civil Procedure. However, when the facts are brought to the notice of this Court, this Court always has the power under Order I Rule 10(2) to strike out unnecessary parties so that it does not result in an embarrassment of the trial.

9. In the light of the above discussion, the Civil Revision Petition stands partly allowed. No costs.

10. The 2nd and 3rd defendants, who are the 2nd and 3rd petitioners before me, are struck from the array of parties in the suit. Insofar as the other defendants are concerned, the suit will be continued to be on the file and it should go for a trial. As the petitioners have partly succeeded, the cost of



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Rs.3,000/- imposed by the Court will stand deleted. Consequently, the connected Civil Miscellaneous Petition is closed.

24.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The XIX Assistant City Civil Court,
Chennai



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V. LAKSHMINARAYANAN, J.

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