



WEB COPY



C.R.P.No.3266 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3266 of 2024

&

C.M.P.No.17478 of 2024

Sivakumar

..... Petitioner

-Versus-

1.Suganthi

2.Prem

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal Orders dated 18.06.2024 made in I.A.No.38 of 2024 in O.S.No.217 of 2020 on the file of the Principal District Munsif, Tiruppur.

*For Petitioner : Mr.K.Govi Ganesan*



C.R.P.No.3266 of 2024

## **ORDER**

This civil revision petition arises against the order of the learned Principal District Munsif, Tiruppur, dated 18.06.2024 made in I.A.No.38 of 2024 in O.S.No.217 of 2020.

2. The suit in O.S.No.217 of 2020 has been filed by the respondents. They claimed that a Power of Attorney had been executed by one K.Palanisamy, the original owner of the suit property in their favour. By that deed, been authorized to take care of the property. In pursuance thereof, they visited the suit property in order to fence the same. At that time, the defendant came and interfered with their possession. Hence, they presented the suit for permanent injunction.

3. On being served with the summons, the 1<sup>st</sup> defendant took out an application for rejection of plaint. His plea is that the said K.Palanisamy has not been impleaded as party to the suit and, therefore, the plaint has to be rejected. The learned trial judge after receipt of the counter affidavit from the respondent/plaintiff, dismissed the application on 18.06.2024 against which the present civil revision.

4. Heard the learned counsel for the petitioner.

5. The learned counsel for the petitioner would submit that non-impleading of the principal is fatal to the suit. He would also point out that



C.R.P.No.3266 of 2024

O.S.No.217 of 2020 had been filed after O.S.No.90 of 2016 had been filed by one Govindasamy Gounder. He would further point out that Govindasamy Gounder had passed away and the present civil revision petitioner had been brought on record as one of his legal heirs. He would further add that the said K.Palanisamy is the 1<sup>st</sup> defendant in O.S.No.90 of 2016 on the file of the learned Additional District Munsif, Tiruppur. In order to delay the suit in O.S.No.90 of 2016, the said K.Palanisamy had executed the Power of Attorney and the respondents had filed the present suit. He would therefore plead that the plaint in O.S.No.217 of 2020 deserves to be rejected.

6. I have carefully considered the submissions made by the learned counsel for the petitioner.

7. Non-impleading of a proper and/or necessary party can be a ground to dismiss the suit, but, it is not a ground for rejection of the plaint. While considering the plea of rejection of plaint, the court would read the plaint as it is and decide whether there is cause of action or not. Insofar as the present suit is concerned, the specific case of the respondents/plaintiffs in paragraphs 4 & 5 is that they have obtained a power of attorney and in pursuance thereof, when they went to the property to fence the same, the defendant, who, according to them, has no right, title or interest over the suit schedule property interfered



C.R.P.No.3266 of 2024

with their possession and hence the suit.

WEB COPY

8. A suit for permanent injunction need not be presented only by a person who has title to the property. The present suit has been filed invoking Section 27(c) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. In terms of that section, a suit can be filed by a person who is in lawful possession of the property for the purpose of preventing any third party from interfering with their lawful possession.

9. Insofar as possession of the agent is concerned, it is the possession of the principal. This position has been settled by the Supreme Court in **Southern Roadways Ltd. v. S.M. Krishnan [(1989) 4 SCC 603]**.

10. The case of the plaintiffs in the present suit is that they are in lawful possession of the property on behalf of their Principal-K.Palanisamy and therefore, they are entitled to seek for injunction against the entire world other than K.Palanisamy himself.

11. As to the plea that this suit is counter blast to the suit in O.S.No.90 of 2016 is concerned, no law prevents, a defendant in a suit to file another suit as a plaintiff, seeking for permanent injunction. That too, is not a ground under Order VII, Rule 11 of CPC. Thus, I do not find any merits in the civil revision petition and the same is liable only to be dismissed.

**In the result,** the civil revision petition is dismissed. No costs.



C.R.P.No.3266 of 2024

Consequently, connected CMP is closed.

WEB COPY

Index : yes / no  
Neutral Citation : yes / no  
Speaking / Non Speaking Order  
kmk

13 ..08..2024

To

1.The Principal District Munsif, Tiruppur.



WEB COPY



*C.R.P.No.3266 of 2024*

V.LAKSHMINARAYANAN.J.,

kmk

C.R.P.No.3266 of 2024

13..08..2024