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CRP(PD).No.2446 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.2446 of 2024

and

C.M.P.No.12797 of 2024

Shalini Sashidharan

... Petitioner

Vs.

1.Murugesan

2.Vasanth

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.03.2024 passed by the Court of the District Munsif Cum Judicial Magistrate at Cheiyyure in IA.No.3/2023 in OS.No.33/2023.

For Petitioner : M/s.M.K.Kabir, Senior Counsel
for M/s.M.K.Padma

For Respondent : M/s.Mr.Abdul Mubeen for R.1

R.2 served – No appearance

ORDER



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Challenging the order passed by the learned District Munsif Cum Judicial Magistrate at Cheyyur in and by which the learned District Munsif had dismissed the application in IA.No.3 of 2023 filed by the petitioner/1st defendant to strike out her name as the 1st defendant in a suit OS.No.33 of 2023, the petitioner/1st defendant is before this Court.

2. Brief facts are as follows:-

3. The 1st respondent/plaintiff had filed the suit O.S.No.33 of 2023 on the file of the above Court seeking an injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property has been described as an extent of 61 cents comprised in S.No.75/4, Kottaikadu Village, Idaikazhinadu Town, Cheyyur Taluk, Chengalpattu District.

The boundaries of the suit property are described as follows:-

East by	:	Murugesan Land
West by	:	Shanmugam Land
North by	:	Elumalai Land
South by	:	Channel

4. The 1st respondent/plaintiff would submit that he is the owner



of the suit schedule property and the defendants who have no right title or interest in the suit property are attempting to encroach into the property with the intent of grabbing the same. They are trying to form a road on the western side of the suit property to reach the 1st defendant's land. The cause of action for filing the suit arose on account of an attempt by the defendants on 24.06.2023 to interfere with the plaintiff's peaceful possession of the suit property, which was successfully thwarted by the plaintiff. Therefore, the plaintiff has come forward with the aforesaid suit.

5. The petitioner/1st defendant on entering appearance in the suit had taken out the application in IA.No.3 of 2023 to strike off her name as the 1st defendant in the above suit. The basis on which the said application has been filed is that the plaintiff has come to Court with an absolutely false statement since the petitioner/1st defendant had sold her property even as early as on 27.10.2022 before the alleged date of occurrence i.e. on 24.06.2023. That apart, in the plaint the 1st respondent/plaintiff has stated that the petitioner/1st defendant is trying to form a road on the western side of suit property. However, the 1st



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respondent/plaintiff has described the owner of the property to the west of his property as one Shanmugam. For these reasons, the petitioner/1st defendant would seek to have her name struck off from the array of parties as she is neither a necessary nor a proper party to the proceedings.

6. A counter has been filed by the 1st respondent/plaintiff inter alia contending that the petitioner/1st defendant had illegally started constructing a road on the western side of the suit property and therefore he had impleaded the petitioner/1st defendant. The 1st respondent/plaintiff had approached the petitioner/1st defendant on several occasions asking her to stop the illegal activity but she continued with the same. Therefore, he would pray that the application be dismissed.

7. The learned District Munsif Cum Judicial Magistrate, Cheiyyure proceeded to dismiss the application on the ground that the defence raised by the petitioner is premature and it has to be considered only by a full-fledged trial. Therefore, the petitioner is



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before this Court.

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8. Heard the counsels on either side and perused the records.

9. The 1st respondent/plaintiff had filed the suit on the allegation that the defendants were illegally attempting to lay a road on the western side of the suit property to reach the petitioner/1st defendant's land and secondly on the ground that on 24.06.2023 they had attempted to enter the property which was prevented by the 1st respondent/plaintiff.

10. The schedule of property describes the western side owner as one Shanmugam and not the petitioner, Shalini Sashidharan. That apart, on the date of the alleged cause of action i.e. 24.06.2023, the petitioner/1st defendant was not even the owner of the property as she had sold the same on 27.10.2022 itself much before the date of occurrence.

11. The learned District Munsif Cum Judicial Magistrate,



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Cheyyur after considering the fact that Ex.P.1 would clearly reveal that the petitioner had sold the property on 27.10.2022 and the date of occurrence of the alleged instance is much later on 24.06.2024, still proceeded to reject the application on the ground that it is premature, despite the documents before the Court indicating otherwise. The learned Judge ought to have allowed the application since from the pleadings and evidence it is clearly evident that the petitioner is neither a proper nor necessary party to the proceedings.

12. Further, Order 1 Rule 10(2) of the CPC provides that, whether suo motu or upon an application, if the Court come to the conclusion that a party has been improperly joined and their presence is not required for adjudicating and settling the questions involved in the suit, the name of that party can be struck off from the array of parties. In the instant case, on a mere perusal of the pleadings coupled with the documents filed in support of the impugned application clearly demonstrate that the petitioner/1st defendant is neither a proper nor a necessary party to the proceedings.

13. Hence, the Civil Revision Petition is allowed. The impugned



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order passed by the learned District Munsif Cum Judicial Magistrate at Cheiyyure in IA.No.3 of 2023 dated 18.03.2024 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.03.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The District Munsif Cum Judicial Magistrate at Cheiyyure.

P.T. ASHA. J.,



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