

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.02.2009

Coram:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

C.R.P. (PD) .No.690 of 2006
and
C.M.P.No.6756 of 2006

Muthulingam

... Petitioner

vs.

1.V.Gunasekaran
2.G.Singaravel
3.V.Rathakrishnan
4.Arul
5.Rajendiran
6.Samuvel
7.K.Meera
8.N.Balasubramanian
9.Rajasekaran
10.Kasthuri
11.Santhakumari
12.Vasantha

... Respondents

(No relief sought against respondents
2 to 12 and they are given up in the
above CRP)

This civil revision petition is preferred against the order dated 08.09.2005 passed by the learned II Additional District Munsif, Ulundurpet in I.A.No.689 of 2005 in O.S.No.389 of 2004.

For Petitioner : No appearance

For Respondents : No appearance

ORDER

Animadverting upon the order dated 08.09.2005 passed by the learned II Additional District Munsif, Ulundurpet in I.A.No.689 of 2005 in O.S.No.389 of 2004, this civil revision petition is focussed.

2. A summation and summarisation of the relevant facts, which are absolutely necessary and germane for the disposal of this revision would run thus:

The first respondent/plaintiff herein filed the suit O.S.No.389 of 2004 seeking permanent injunction so as to restrain the defendant his men, agents, servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. It appears, the defendant entered appearance and filed the written statement. Whereupon, when the matter was posted for trial, the plaintiff filed I.A.No.689 of 2005 under Order I, Rule 10(2) of the Code of Civil Procedure for impleading as many as 10 persons as defendants, D3 to D12 in the suit. After hearing both the sides, the lower court allowed the application. Being disconcerted by and dissatisfied with the order of the lower Court, the ninth respondent/proposed party in the I.A has filed this revision on the following grounds, inter alia thus:

The lower Court without considering the fact that the suit itself is for injunction as against the two defendants and without any cause of action, simply permitted the plaintiff to add as many as 10 more defendants. Hence, he prayed for setting aside the impugned order of the lower Court.

3. Despite printing the learned counsel on either side, no one represented.

4. Pored and perused the records, which would demonstrate and evince that the suit itself is for bare injunction as against the two defendants, on the main allegation that there was an oral partition among the plaintiff, his brother including the second plaintiff and their father and in that the suit property was allotted to the share of the plaintiff; he has been enjoying the same; he rented out various portions to several tenants; D2 created a mortgage in favour of D1 illegally in respect of the suit properties and that the defendants 1 and 2 are trying to trespass into the suit property and give disturbance to him. However, in the affidavit accompanying the I.A.No.689 of 2005, which was filed as stated supra under Order 1 Rule 10(2) of the Code of Civil Procedure to implead additionally as many as 10 defendants, the plaintiff simply alleged as though D2 pleaded in the written statement that the suit was bad for non-joinder of necessary parties and that the respondents 8 to 12 are none but the brothers and sisters of D1 and D2 and the remaining proposed parties are tenants and that they should be added as defendants. In the cause of action para in the plaint, there

is no whisper about anything so as to justify the impleadment of the proposed additional 10 defendants.

5. The entire reading of the plaint would project and convey as though D1 and D2 only are trying to interfere with the plaintiff's possession and enjoyment of the suit properties and in such a case, it is not known as to how the lower Court in its cryptic order throwing to winds the relevant laws and that too without au courant with facts and au fait with law, passed such an order. The scope of the suit should have been taken into account by the lower court. But it failed to do so. In an injunction suit, the plaintiff cannot try to directly get his title decided. If at all, the plaintiff was interested in getting his title decided and once for all to put an end to all sorts of disputes relating to the suit property, he ought to have filed a proper comprehensive suit and not a suit for bare injunction and hence, the revision petitioner is right in setting forth the grounds of revision as against the order of the lower Court.

6. De hors the fact whether the respondents and proposed parties are objecting to such impleadment or not, the lower Court was enjoined by law to see as to whether impleadment of such new parties was necessary. But, in this case, merely on apprehension and that too without any cause of action against the proposed defendants, the plaintiff simply did choose to file the said I.A., which deserves to be dismissed. Accordingly, the order of the lower Court in I.A.No.689 of 2005 is set aside by allowing this revision and the I.A shall stand dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Vj2

Sd/
Asst.Registrar

/true copy/

To

Sub Asst.Registrar

The II Additional District Munsif, Ulundurpet

C.R.P. (PD).690 of 2006

KG (CO)
SR/9.3.2009