

(2009) 04 MAD CK 0532

Madras High Court

Case No: C.R.P. (PD) No. 43 of 2009 and M.P. No. 1 of 2009

Pavayee (died), rep. by her
Power of Attorney, R. Ganapathy
and Another

APPELLANT

Vs

Nil, Arumugam, rep. by his
Power of Attorney, Mohanraj
and Mohanraj

RESPONDENT

Date of Decision: April 15, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, 151

Citation: (2009) 3 CTC 368

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: P. Valliappan, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

S. Palanivelu, J.

The Petitioner is the Plaintiff in O.S. No. 1 of 1999 on the file of the District Munsif Court, Tiruchengode. He filed an Application in I.A. No. 1563 of 2008 Under Order 1, Rule 10, and Section 151, C.P.C., to implead one Mohanraj, who is acting Power Agent for the Second Respondent in the Suit in his individual Capacity. In the affidavit, it is alleged that the second defendant along with his men is seriously trying to interfere with the possession and enjoyment of the suit properties, not only claiming as a Power Agent of the second defendant, but also in his individual capacity and therefore, he has to be necessarily added in the Suit in his personal capacity or otherwise, the plaintiff has to file another Suit, even if the present Suit is decreed as prayed for. It is further stated in the affidavit that if he is not added, it would lead to multiplicity of the proceedings.

2. In the counter, it is stated that the Power Agent, on behalf of the second defendant has been in possession and enjoyment of the Suit properties and it is absolutely false to state that this third respondent in his individual capacity is seriously trying to interfere with the plaintiff's possession and enjoyment; that at no point of time, he claimed any right in the individual capacity and it is also impossible and hence, the Petition is liable to be dismissed, as not maintainable. It is also stated that the petitioner cannot have any cause of action against the proposed party individually, in any event, after the lapse of nine years; that Petition is a belated one; and that he is not a necessary party for complete adjudication of the subject matter.

3. Learned District munsif dismissed the Application with a costs of Rs. 500/- by observing that eventhough the proposed party is on record as Power Agent for the second defendant, there is no need to implead him in his individual capacity, since he does not know about the present Suit and that the matter of possession has to be decided at the time of trial.

4. Heard the learned counsel for the parties and perused the materials on record.

5. The Petitioner/Plaintiff seeks to implead one Mohanraj, who is acting as the Power Agent for the second defendant in his individual capacity, since he is trying to interfere with the possession with his men. The Petition has been filed after a lapse of nine years. In the affidavit, the petitioner has not alleged any specific particulars with regard to the date or place, in which, the proposed party attempted to interfere with his possession. Mere allegation in the affidavit by the plaintiff to the effect that the proposed party along with his men is seriously trying to interfere with his possession, not only claiming as the Power Agent of the second defendant, but also in his individual capacity, is not sufficient to constitute any cause of action against the defendants, much less, the proposed parties to put forth the case, it can be stated that the affidavit does not disclose any cause of action for seeking impleadment of the proposed party. Another circumstance available in this matter is a specific denial of the proposed party in his counter that at no point of time, he claimed any right over the property in his individual capacity.

6. In view of the above said circumstances, the present Petition for impleading the proposed party is not maintainable and the order passed by the Court below does not warrant any interference from this Court, which deserves to be confirmed and accordingly, confirmed. In fine, the Civil Revision Petition is dismissed. No costs. However, the learned District Munsif, Tiruchengode is directed to dispose of O.S. No. 1 of 1999 on his file, preferably within a period of three months from the date of receipt of a copy of this order.