



C.R.P.(MD) No.1161 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**C.R.P.(MD) No.1161 of 2023**

and

**C.M.P.(MD) No.5598 of 2023**

Malayammal

... Petitioner

Vs.

1.K.Mariselvam

2.Vinobha Bave Sarvodaya Samuka Seva Sangam

Reg. No.3/57

Through its President Thiru Nagarajan

S/o.Arunachalam, Duwaraga, Door No.8/54

Kamala Nagar, Ramapuram Puthu Giramam,

Agastheeswaram Taluk,

Kaniyakumari District.

... Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No. 1 of 2020 in O.S.No.199 of 2019 on the file of the learned III Additional District Judge, Tirunelveli, dated 17.12.2021.

For Petitioner : Mr.T.A.Ebenezer

For R1 : Mr.K.P.Narayanakumar

For R2 : Mr.K.Dinesh



C.R.P.(MD) No.1161 of 2023

**ORDER**

WEB COPY

This Civil Revision Petition has been filed by the petitioner as against the impugned order dated 17.12.2021 passed by the learned III Additional District Judge, Tirunelveli in I.A.No.1 of 2020 in O.S.No.199 of 2019.

2. The suit in O.S.No.199 of 2019 was filed by the first respondent/plaintiff for the relief of specific performance of the contract. During the pendency of the above suit, the petitioner/third party has moved an application to implead herself as a defendant in the suit by stating that she is in possession of the 2<sup>nd</sup> and 3<sup>rd</sup> suit schedule properties and her husband built a house in the 3<sup>rd</sup> suit schedule property and was doing agricultural work in the adjacent land. After the death of the petitioner's husband on 04.11.2006, she is continuing to do the agricultural work and is living in the said house built by her husband in the 3<sup>rd</sup> suit schedule property.

3. It is submitted that there is no relevance between the suit properties and the second respondent/defendant Sangam and the second respondent/defendant Sangam is a bogus one. It is further submitted that in the plaint filed by the first respondent/plaintiff, he has admitted that the possession of the suit properties is in the hands of the petitioner. Therefore, it is necessary



C.R.P.(MD) No.1161 of 2023

for the petitioner to implead herself as a defendant in the suit. It is further contention of the petitioner that the patta of the 2<sup>nd</sup> and 3<sup>rd</sup> suit schedule properties was issued in favour of her husband Muthiah and after death of Muthiah, it was transferred in the name of the petitioner. It is submitted that since the second respondent/defendant has tried to dispose of the petitioner from the suit schedule properties, she sent a legal notice to the second respondent/defendant Sangam on 16.07.2019. Hence, the petitioner/third party prayed for impleading herself as a defendant in the suit.

4. The same was resisted on the side of the first respondent/plaintiff by way of counter stating that the second respondent/defendant executed a Sale Agreement in respect of the suit schedule properties in favour of the first respondent/plaintiff on 06.04.2017 and since the second respondent/defendant failed to perform as per the contract, he was constrained to file the suit for specific performance. It is further submitted that there is no relevance between the suit schedule properties and the petitioner/third party and therefore, there is no necessity to add the petitioner as a party in the suit.

5. The Trial Court after considering the petition affidavit and counter affidavit and arguments advanced by the respective counsels, dismissed the



C.R.P.(MD) No.1161 of 2023

I.A. filed by the petitioner/third party on the ground that in a suit for specific performance, no relief can be granted to the petitioner as she is not a party to the suit. Aggrieved by this, the petitioner/third party has filed the present Civil Revision Petition.

6. The learned counsel appearing for the petitioner/third party would contend that a collusive suit has been filed between the first respondent/plaintiff and the second respondent/defendant. The 2<sup>nd</sup> and 3<sup>rd</sup> suit schedule properties are in possession of the petitioner/third party and patta was issued in favour of the petitioner's husband which was later transferred in the name of the petitioner after the death of her husband. It is submitted that the second respondent/defendant is illegally trying to evict the petitioner from the suit schedule properties.

7. The learned counsel for the petitioner/third party would further submit that in the order of this Court in W.P.(MD) No.17059 of 2019 dated 05.08.2019 clearly shows the possession of the petitioner/third party in the suit schedule properties. The Trial Court has wrongly concluded that Ex.P1 to P18 did not show the petitioner/third party as the owner of the suit schedule properties. The petitioner/third party has sufficient documents to establish the



C.R.P.(MD) No.1161 of 2023

possession of the suit schedule properties. Hence, the order passed by the Trial

Court is liable to be set aside.

8. The learned counsel for the petitioner/third party would further contend that the purchaser may be impleaded in a suit for specific performance when valid reasons were raised on the side of the purchaser. To support of his contention, the learned counsel for the petitioner/third party relied upon a decision of the Hon'ble Apex Court in the case of **Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and Others**, reported in (2013) 5 SCC 397.

9. On the other side, the learned counsel for the second respondent/defendant Sangam would submit that the petitioner/third party cannot be impleaded in the suit for specific performance as the dispute is only between the first respondent/plaintiff and the second respondent/defendant. He would further submit that an alternative remedy is available for the petitioner/third party to file a fresh suit in this regard.

10. The learned counsel for the second respondent/defendant Sangam would further submit that the petitioner/third party is a land grabber and the



C.R.P.(MD) No.1161 of 2023

patta issued in the name of the petitioner's husband which was later transferred to the name of the petitioner/third party, stood cancelled by virtue of the order of the Tashildar, Palayamkottai dated 28.02.2017. Therefore, the petitioner has no *locus standi* to implead herself as a defendant in the suit. The patta now stands in the name of the second respondent/defendant Sangam.

11. To support of his above contentions, the learned counsel for the second respondent/defendant Sangam has relied upon the following two decisions:-

- i. **C.D.Sanjay Raj Vs. Sri. N.Anandha Krishnan and others**, reported in 2022 AIR CC 2231 : 2022 (3) AIR Kar R 425.
- ii. **Kaliyaperumal Vs. Selvaraj and others**, reported in 2020 AIR (Madras) 192 : 2020 (4) Civ CC 552.

12. Heard on both side. Records perused.

13. Relying the principles laid down by the Karnataka High Court in **C.D.Sanjay Raj** case cited *supra* by the learned counsel for the second respondent/defendant Sangam and the present legal position, this Court has come to a conclusion that in the suit for a specific contract filed by the first



C.R.P.(MD) No.1161 of 2023

respondent/plaintiff, the impleadment of the petitioner/proposed party is not necessary as the petitioner/proposed party is not a party to the Sale Agreement entered into between the first respondent/plaintiff and the second respondent/defendant. Moreover, the first respondent/plaintiff being *dominus litis* and in absence of legal necessity cannot be forced to add the petitioner as a defendant in the suit. Therefore, there is no infirmity in the impugned order passed by the Trial Court and the impugned order of the Trial Court is confirmed. Thus, the present Civil Revision Petition is liable to be dismissed.

14. With the above observations, this Civil Revision Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

11.09.2023

Internet : Yes/No  
NCC : Yes/No  
jen

To

The III Additional District Judge,  
Tirunelveli.



WEB COPY



C.R.P.(MD) No.1161 of 2023

**K.GOVINDARAJAN THILAKAVADI, J.**

jen

C.R.P.(MD) No.1161 of 2023  
and C.M.P.(MD) No.5598 of 2023

11.09.2023