

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-12-2015

(Orders reserved on 16-12-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD).No.565 of 2013
& M.P.No.1 of 2013

1. S.Duraisamy
2. K.Kavitha

.. Petitioners

Vs.

1. S.Rathamani
2. P.Baby

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.08.2012 in I.A.No.445 of 2012 in O.S.No.218 of 2011 on the file of the Second Additional District and Sessions Judge, Tiruppur.

For petitioners : Mr.P.Valliappan

For respondents : Mr.S.Kumaresan for R-1

R-2 served. No appearance.

ORDER

This Civil Revision Petition is preferred against the order dated 21.08.2012 in I.A.No.445 of 2012 in O.S.No.218 of 2011, passed by the learned Second Additional District Judge, Tiruppur, in and by which, the application filed by the first respondent herein (third party) to implead her as a defendant in the suit, was allowed.

2. Learned counsel for the revision petitioners/plaintiffs contended that the suit is filed by the plaintiffs against the second respondent/defendant for specific performance of the sale deed and the dispute is only between the plaintiffs and the defendant and the third party is not all a necessary party to the suit. He

further submitted that the trial Court erroneously passed the impugned order by impleading the first respondent herein (third party) as a party-defendant to the suit and therefore, the impugned order is liable to be set aside and the Civil Revision Petition may be allowed.

3. Learned counsel for the first respondent/third party contended that some portion of the suit property was sold by the defendant to the third party and she is in possession of the property. He further contended that the third party has evinced interest in the suit property and hence, the trial Court is correct in impleading the third party as a party-defendant to the suit and therefore, he prayed that the Civil Revision Petition may be dismissed.

4. Heard the learned counsel for the petitioners and the learned counsel for the first respondent/third party and perused the materials available on record.

5. It is admitted that the revision petitioners/plaintiffs filed the suit for specific performance by virtue of the agreement entered into between the plaintiffs and the defendant on 11.11.2010 and consideration was fixed at Rs.19,50,000/-. Since the defendant failed to execute the sale deed, the plaintiffs have filed the suit for specific performance. The third party has filed the application before the Court below to implead her as a party-defendant to the suit, alleging that the defendant has executed a registered sale deed in favour of the third party on 22.03.2011 in respect of one portion of the suit property and on the same day, in respect of the remaining portion of the suit property, the defendant has entered into sale agreement with the third party and from 22.03.2011, the third party is in possession of the suit property and hence, she

wanted to implead herself as a party-defendant to the suit. Thus, it is seen that one portion of the suit property was sold in favour of the first respondent/third party on 22.03.2011, which is subsequent to the date of sale agreement entered into between the plaintiffs and defendant on 11.11.2010. Even though some portion of the suit property was sold to third party and the sale agreement was entered into between the plaintiffs and defendant, the suit for specific performance is filed by the plaintiffs on 03.05.2011. Hence, before filing of the suit, the third party purchased some portion of the property from the defendant. Since the sale deed was executed in favour of the third party, in order to avoid multiplicity of proceedings and to meet the ends of justice, the third party is a necessary party to the suit. Hence, the impugned order of the trial Court impleading the first respondent herein (third party) as a defendant to the suit, does not warrant any interference by this Court. There is no infirmity or illegality in the impugned order of the trial court.

6. Hence, the Civil Revision Petition is liable to be dismissed and the same is accordingly dismissed. No costs. The Miscellaneous Petition is closed.

21-12-2015

Index: Yes/no
Internet: Yes/no
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1. The Second Additional District and Sessions Judge, Tiruppur.
2. The Record Keeper, V.R. Section, High Court, Madras.

G.CHOCKALINGAM,J

Order
in
C.R.P.(PD).No.565 of 2013

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