

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4788 of 2015
and M.P.No.1 of 2015

S.Dhananjeyan

.. Petitioner

Vs

1.S.Durai

2.Punjab National Bank,
By its Manager,
Broad Bazaar Road, Ambur,
Vellore District.

3.E.Bhaskar

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.11.2015 made in I.A.No.242 of 2014 in O.S.No.54 of 2013 on the file of the Subordinate Court, Gudiyatham, Vellore District.

For Petitioner : Mrs.Hema Sampath
Senior Counsel
for Mr.H.Adaikala Arockiaraj

ORDER

The Civil Revision Petition is filed against the order dated 02.11.2015

made in I.A.No.242 of 2014 in O.S.No.54 of 2013 on the file of the Subordinate Court, Gudiyatham, Vellore District.

2.The first respondent as a plaintiff filed a suit for specific performance on the basis of the sale agreement dated 27.08.2012 after issuance of notice. The First defendant/petitioner herein filed a written statement by stating that the sale agreement is a forged document and that has been forged by the proposed party/3rd respondent herein. During the pendency of the suit, the first defendant/petitioner herein filed an application to implead the proposed party as party to the proceeding. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.The learned senior counsel appearing for the petitioner submitted that the case of the first defendant/petitioner herein is that the proposed party has forged the sale agreement and hence, he is a necessary party for adjudicating the matter. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

4.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

5.Considered the argument advanced by the learned senior counsel along with the typed set of papers. It is appropriate to consider the provision of Order I Rule 10(2) of CPC, wherein it was specifically mentioned who is a proper and necessary party for adjudicating the matter. Here in this case the suit is for specific performance. Admittedly, the revision petitioner is the owner of the property. The case of the first respondent/plaintiff is that he entered sale agreement on 27.08.2012. He issued a notice and after receipt of the notice, the first defendant alleged to have sent a reply. But in the written statement, he has stated that the suit sale agreement is a forged one. Further, in paragraph No.7 of the written statement, he has stated as follows:

“7..... the plaintiff is a close relative of one A.E.Bhaskar of Chinnavarigam village. This defendant and the said Bhaskar were doing Real Estate business jointly for the past 5 years. Some misunderstanding arose between the parties about one year ago. The said Bhasker seemed to have created the suit agreement by forging the signature of this defendant and filed the suit in the name of the plaintiff who is his close relative with some ulterior motives. The plaintiff is name lender to him.”

6.Once the suit is filed for specific performance and the first defendant raised the plea that the sale agreement is a forged one, it is the duty of the

plaintiff to prove that the suit sale agreement is true and genuine and it is not the duty of the defendant to prove that the sale agreement is forged and so, the application filed by the petition is speculative in nature. The Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, I do not find any reason to interfere with the finding of the Trial Court and the Civil Revision Petition deserves to be dismissed as devoid of merits.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Judge,
Gudiyatham, Vellore District.

R.MALA. J.,

cse

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