

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.11.2016

Delivered on: 18.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD) No.1517 of 2012 &
M.P.No.1 of 2012

T.Balu

.... Petitioner

vs

1. Thanthoni Naiker
2. T.Siva
3. T.Ramesh
4. T.Thanusu
5. The Sub Registrar,
Dusi Village,
Dusi Post,
Cheyyar Taluk,
Tiruvannamalai District.
6. Kumaresan

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order, dated 13.10.2011 passed by the learned Principal District Munsif-Judicial Magistrate No.1, Cheyyar in I.A.No.361 of 2011 in O.S.No.103 of 2008.

For petitioner : Mr.S.Makesh

For respondents : No representation

ORDER

This Civil Revision Petition has been filed against the order dated 13.10.2011 passed by the learned Principal District Munsif-Judicial Magistrate No.1, Cheyyar in I.A.No.361 of 2011 in O.S.No.103 of 2008 dismissing the application filed by the petitioner herein, for impleading proposed respondent as 6th defendant in the suit, who is said to be the purchaser of the suit property during the pendency of the suit.

2. Heard the learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondents.

3. The petitioner herein is the plaintiff in the suit. The suit was filed for partition with consequential reliefs. According to the petitioner, he came to know that a portion of the suit property had been sold by the respondents 1 to 3/defendants 1 to 3 to the third party on 16.4.2008 only at the time of trial and therefore, an interlocutory application in I.A.No.361 of 2011 was moved, seeking to implead the *pendente lite* purchaser, as according to the petitioner, he was necessary party for effective adjudication of the suit.

4. The above said interlocutory application was resisted by the

respondents/defendants by way of counter affidavit, wherein, they denied the bona fides of the petitioner/plaintiff in filing the interlocutory application at belated stage.

5. The learned trial Court, after hearing the submissions of the parties, has concluded that the interlocutory application was not maintainable and no relief could be granted to the petitioner/plaintiff and accordingly, rejected the interlocutory application on 13.10.2011. The learned trial Court has recorded elaborate reasons for denying the relief to the petitioner/plaintiff, which are stated as follows.

6. It was the case of the parties that a portion of the suit property, namely, Ac.2.60 cents was sought to be transferred to the proposed party under sale agreement executed by the respondents/defendants as well as the petitioner/plaintiff. However, pursuant to the sale agreement, the petitioner/plaintiff did not execute sale in favour of the proposed 6th defendant and hence, defendants 1 to 3 had transferred Ac.1.95 cents of land to the proposed 6th defendant, leaving share of 65 cents to the petitioner/plaintiff. It was also the case of the parties that the remaining 65 cents apportioned to the petitioner/plaintiff, was ultimately sold to the proposed 6th

defendant by the petitioner/plaintiff himself. Therefore, the petitioner/plaintiff had full knowledge of the transaction and his averment that he came to know only at the time of trial was far from truth.

7. The learned trial Court has further recorded the reasons that the proposed 6th defendant had, in turn, sold the subject property to third parties which fact was not disputed by the petitioner/plaintiff and hence, impleadment of proposed 6th defendant was not necessary. More over, the case of the petitioner/plaintiff was not that the proposed 6th defendant was still the owner of the subject property. In the absence of any specific pleadings to that effect, the trial Court found that the relief as prayed for by the petitioner/plaintiff could not be granted. The trial Court, further found that there were 22 items mentioned in the suit property and from among the items, which was sold to the proposed 6th defendant was not specifically pleaded by the petitioner/plaintiff and no document was filed on his behalf in support of his averment and contentions. Finally, the trial Court concluded that the interlocutory application seeking amendment of 6th defendant lacks bona fide and the same was not found to be genuine prayer.

8. Recording the above reasons, the learned trial Court rightly dismissed the interlocutory application.

9. The learned counsel for the revision petitioner contended that the rejection of the application under Order 1 Rule 10(4) CPC, was contrary to law and the same was filed only to avoid multiplicity of proceedings in order to get the civil dispute between the parties fully resolved and non-impleadment of the proposed defendant would prejudice the case of the petitioner/plaintiff.

10. This Court appreciated the argument of the learned counsel appearing for the petitioner, however, finds that there is no merit in the contention in view of the detailed and valid reasons recorded by the learned trial Court while dismissing the interlocutory application.

11. From the submissions recorded and reasons set forth by the trial Court, it could be seen that the interlocutory application for impleadment of 6th defendant was not necessary and dismissal of the application would no way prejudice the case of the petitioner/plaintiff herein. The petitioner, who himself was party to the sale to the proposed 6th defendant, cannot claim ignorance about the sale of the

property and come forward with the application seeking impleadment of 6th defendant at the time of trial. More over, the fact that the property which was sold to the proposed 6th defendant, was in fact, sold to other third party which fact was not denied by the petitioner/plaintiff. In such view of the matter, this Court finds no infirmity in the order passed by the learned trial Court in I.A.No.361 of 2011 in O.S.No.103 of 2008 in order to interfere with the same.

Accordingly, the Civil Revision Petition fails and it is dismissed. There shall be no order as to costs. Consequently, connected MP is closed.

Internet: yes/no
Index: Yes/no
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18-11-2016

V.PARTHIBAN, J.

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Pre delivery Order in
CRP PD No.1517 of 2012

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