

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1168 of 2016

The Selvavinayagar Co-Operative Handloom
Weavers Production and Sales Society
Represented by its President
N.B.Subramani
No.U543, Srikalikapuram Village
Pallipattu Taluk
Tiruvallur District

... Petitioner

vs.

1.P.A.Vinayagam
2.P.K.Rajendiran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to allow the Civil Revision Petition and set aside the order and decree in I.A.No.6 of 2016 in O.S.No.121 of 2011 dated 12.02.2016 on the file of the I Additional District Judge, Tiruvallur and implead the petitioner society as a party defendant in O.S.No.121 of 2011.

For Petitioner : Mr.S.Palaniswamy

For Respondents : Mr.R.Bharath Kumar

ORDER

Respondent No.1 has entered appearance through counsel. The revision has been filed by a third party to the suit in O.S.No.121 of 2011 on the file of I Additional District Judge, Tiruvallur, after suffering an order of dismissal of an application to get impleaded as a party defendant in the suit filed by the first respondent herein for specific performance against the second respondent herein.

2. The above said suit was filed for the relief of specific performance based on an agreement for sale dated 19.11.2009 allegedly executed by the second respondent herein in favour of the first respondent herein in respect of the suit property.

3. The revision petitioner is a Co-operative Society and it claims that the suit property belongs to it. Hence, the revision petitioner filed the above said application I.A.No.6 of 2016 under Order I Rule 10(2) CPC to get itself impleaded as a party defendant in the said suit. The application was resisted by the first respondent herein/plaintiff contending that in a suit for specific performance, a stranger to the agreement cannot be impleaded at his or her instance on the premise that such third party is the real owner of the property.

No doubt, the second respondent / defendant did not raise an objection and stated that he had no objection for such impleadment. After hearing both sides, the learned trial Judge, by the impugned order dated 12.02.2016, dismissed the said application sustaining the objection raised by the first respondent herein/plaintiff. It is as against the said order, the present Civil Revision Petition came to be filed under Order Article 227 of the Constitution of India.

4.The Civil Revision Petition stands listed for admission. The submissions made on behalf of the petitioner and on behalf of the first respondent are heard. Certified copy of the impugned order and copies of the pleadings and other documents produced in the form of typed-set of papers are also perused.

5. The short question that arises for consideration in this revision is "whether a third party to the agreement claiming independent title, not derived through a party to the agreement, can maintain an application for his/her impleadment in a suit for specific performance?" The learned counsel for the petitioner submits that since there was a collusion between the plaintiff and the defendant, who are respondents 1 and 2 herein, pursuant to which the agreement in question came to be executed and the property of the

revision petitioner was sought to be dealt with in the said agreement, the petitioner becomes a proper and necessary party to be impleaded in the suit between respondents 1 and 2 for the relief of specific performance. It is the further contention of the learned counsel for the petitioner that if the petitioner is not permitted to get impleaded, it will drive the petitioner to resist any claim that may be made by the plaintiff in the said suit if he emerges successful or to file a separate suit to establish its title and prevent the infringement of its right in respect of the suit property by the respondents herein. According to the submissions made by the learned counsel for the petitioner, the same will amount to a leverage for multiplicity of proceedings and the same has got to be prevented by allowing the application for impleadment.

6. Per contra, it is the contention of the first respondent/plaintiff that in a suit for specific performance, third party to the agreement and persons who do not claim title under a party to the agreement, shall not be necessary or even a proper party and the plaintiff cannot be compelled to seek a relief against such a person on the sole premise that such third party claims independent title to the property. It is the further contention of the learned counsel for the first respondent that if at all the plaintiff wants to get a decree for specific

performance based on an agreement for sale despite the fact that the title of the vendor under the agreement is challenged by the third party, then it is for the plaintiff either to run the risk or to make the person claiming to the owner as a party to the suit for proper adjudication.

7. The learned counsel for the first respondent also contends that in any event, the question of title shall not be gone into in a suit for specific performance, when the purchaser filing the suit does not question the title claimed by the vendor under the agreement for sale. In support of his contention that the impleadment of the petitioner will avoid multiplicity of proceedings, learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court in ***Baluram vs. P.Chellathangam and Others*** reported in **2014 (6) CTC 803**. A perusal of the said judgment will show that the persons, who sought an order for their impleadment in the suit therein, were the beneficiaries of a Trust and it was held that they could not be termed as strangers to the contract since the agreement was between the Trust and the purchaser under the agreement. Only in that sense, the Hon'ble Supreme Court held that the beneficiary under the Trust in respect of a purported sale by the Trust could not be termed a third party to the contract and not allowing him to get impleaded as a party

defendant would lead to multiplicity of proceedings as the beneficiaries could file a separate proceeding for setting aside such sale. Hence, the said judgment does not render any assistance to the submissions made by the learned counsel for the petitioner.

8. On the other hand, learned counsel for the first respondent relies on a larger Bench (consisting of three Hon'ble Judge) Judgment of the Supreme Court in ***Kasturi Vs. Iyyamperumal and Others*** reported in **2005 (2) CTC 676**. In the said judgment, the Hon'ble Supreme Court has made it clear that in a suit for specific performance, a third party to the contract claiming to have independent title and possession over the property regarding which the contract had been entered into, cannot seek his impleadment as party to the suit. Hon'ble Supreme Court in the said judgment made the following observations:

"8. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief

Act.

9. That apart, from a plain reading of section 19 of the Act we are also of the view that this section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced. "

.....

"17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos. 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale."

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"20. It may be reiterated here that if the appellant who has filed the instant suit for specific performance of contract for sale even after receiving the notice of claim of title and possession by the respondent Nos. 1 and 4 to 11 does not want to join the respondent Nos. 1 and 4 to 11 in the pending suit, it is always done at the risk of the appellant because he cannot be forced upon to join the respondent Nos 1 and 4 to 11 as party-defendants in

such suit."

" 21.....the stranger to the contract, namely, the respondent Nos. 1 and 4 to 11 making claim independent and adverse to the title of respondent Nos. 2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party defendants in the suit for specific performance of contract for sale."

9. So far as the plea of avoidance of multiplicity of proceedings, the Hon'ble Supreme Court, in the said judgment, made the following observations:

" 19. It was also argued on behalf of respondent Nos. 1 and 4 to 11 that to avoid multiplicity of suits it would be appropriate to join the respondent Nos. 1 and 4 to 11 as party-defendants as the question relating to the possession of the suit property would be finally and effectively settled. In view of our discussions made hereinabove, this argument also which weighed with the two courts below has no substance. In view of the discussions made herein earlier, the two tests by which a person who is seeking addition in a pending suit for specific performance of the contract for sale must be satisfied. As stated herein earlier, first there must be a right to the suit property for the same relief against a party relating to the same subject-matter involved in the proceedings for specific performance of contract for sale, and secondly, it would not

be possible for the Court to pass effective decree or order in the absence of such a party. If we apply these two tests in the facts and circumstances of the present case, it would be evident that the respondent Nos.1 and 4 to 11 cannot satisfy the above two tests for determining the question whether a stranger/third party is entitled to be added under Order 1 Rule 10 of the CPC only on the ground that if the decree for specific performance of the contract for sale is passed in absence of respondent Nos. 1 and 4 to 11, their possession over the contracted property can be disturbed or they can be dispossessed from the contracted property in execution of the decree for specific performance of the contract for sale obtained by the appellant against respondent Nos 2 and 3. Such being the position, in our view, it was not open to the High Court or the trial court to join other cause of action in the instant suit for specific performance of the contract for sale, and therefore, the two Courts below acted illegally and without jurisdiction in allowing the application for addition of parties in the pending suit for specific performance of contract for sale filed at the instance of respondent Nos. 1 and 4 to 11"

10. The observations made by the Hon'ble Supreme Court in Kasturi's case extracted above provide a complete answer to the contention raised by the learned counsel for the petitioner to the effect that the petitioner should be impleaded in order to avoid

multiplicity of proceedings. In view of such clear and categorical enunciation of principle of law by the Hon'ble Supreme Court to the effect that a third party to a contract cannot seek impleadement in a suit for specific performance of such contract, especially when the third party does not claim derivation of title from the vendor under the agreement for sale, this Court does not find any merit in the revision and the same deserves to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. No costs.

07.04.2016

Index: Yes/No
Internet: Yes/No
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To

The Subordinate Judge
Chidambaram

P.R.SHIVAKUMAR.J.,

gpa

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