

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.9.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2314/2016

1.M/s.Shriram Properties (Coimbatore)
Private Limited.,
Rep. By its Chief Executive Officer,
No.15, Kalidas Road,
Ram Nagar, Coimbatore 641 009.

2.M/s.Vijaya Hyde Park Apartments
rep. By its partner,
M/s.Shriram Properties Coimbatore Pvt.Ltd.,
through its Authorized signatory,
No.10, Sapthagiri Apartments,
Ramar Kovil Street, Ram Nagar,
Coimbatore 641 009 : Petitioners
versus

1.K.J.Pappachan
2.Thressy Pappachan : Respondents

PRAYER: Revision filed against the order dated 22.3.2016, in I.A.No.731
of 2015 in O.S.No.1142 of 2012 on the file of the III Additional Subordinate
Judge, Coimbatore.

For petitioner : Ms.Ananda Gomathy

For respondent : Mr.Manoj Sreevalsan

ORDER

This civil revision petition is directed against the order dated 22 March 2016 in I.A.No.731 of 2015 in O.S.No.1142 of 2012 whereby and whereunder, the learned III Additional Subordinate Judge, Coimbatore, allowed the application filed by the respondents and impleaded the second petitioner as a party to the suit.

2. The respondents filed a suit against the first petitioner before the Subordinate Court at Coimbatore, contending that the 1st petitioner collected excess amount under the guise of service tax and value added tax and as such, a sum of Rs.1,35,000/- is liable to be refunded. In short, the respondents claimed a money decree for a sum of Rs.1,58,400/-. The suit was contested by the first petitioner by filing written statement.

3. The first petitioner examined D.W.1 and D.W.2 to prove the defence case. D.W.2 in his evidence stated that the proposed defendant is a partner of the first defendant and that he is not aware as to whether the amount was paid by the first defendant or the proposed party. In case, it was the liability of the proposed party to pay the service tax and if the said amount was not paid, the respondents are entitled to a decree against the

second petitioner. The respondents therefore, filed an application in I.A.No.731 of 2015 to implead the second petitioner as second defendant in the suit.

4. The Trial Court having found that the second petitioner is a necessary and proper party for an effective adjudication of the matter, allowed the application for impleading. The said order is challenged on the ground that the application against the second petitioner is barred by limitation.

5. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondents.

6. M/s.Shriram Properties Coimbatore (P) Ltd., is stated to be a partnership firm. The proposed party M/s.Vijaya Hyde Park Apartments, is a partner of the first petitioner. The builder represented by its partner i.e. the proposed party, executed a deed of sale, in favour of the respondents on 20 June 2011. It is the case of the respondents that excess amount was taken by way of service tax and as such, the said amount is liable to be refunded. Since the sale deed was executed by M/s.Shriram Properties Coimbatore (P) Ltd., the company was impleaded as the sole defendant in

the matter. It was only subsequently, the witness examined on the side of the respondents submitted that it was not clear as to whether the second defendant paid the service tax, meaning thereby, liability to pay service tax was only on the second defendant. The respondents immediately filed an application for impleading.

7. In case excess amount was not collected by the proposed party, there is no liability to refund the money. Since sale deed was executed by the first petitioner in its capacity as the partner of the second petitioner, the respondents originally impleaded only the vendor viz., the first petitioner. It was only during the currency of the suit, witnesses have deposed that it is not clear as to whether the amount was appropriated by the first petitioner or the proposed defendant. It was only under such circumstances, the respondents filed the petition for impleading.

8. The sale deed contain a clear indication that the first petitioner signed the deed only as the Director of the second petitioner. In view of the said factual situation, the learned trial Judge was perfectly correct in impleading the second petitioner as a party to the civil suit. I do not find any error or illegality in the said order, warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

9. The learned counsel for the petitioners contended that the relief against the second petitioner is barred by limitation. The said issue would be considered by the learned trial Judge during trial.

10. In the upshot, I dismiss the revision. No costs. Consequently, M.P.No.1/2009 is also dismissed.

27.9.2016

Index:Yes/no
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To

The III Additional Subordinate Judge, Coimbatore.

K.K.SASIDHARAN, J.

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