

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1980 of 2012
and M.P.No.1 of 2012

N.Jayaraman .. Petitioner/Proposed 3rd defendant

Vs.

1.G.P.Ragavaiah .. 1st Respondent/Plaintiff

2.B.Rani

3.B.Babu .. Respondents 2 and 3/Defendants 1 and 2

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 12.03.2012 in I.A.No.5 of 2012 in O.S.No.259 of 2010 on the file of the Principal Sub-Court, Chengalpet.

For Petitioner : Ms.R.Sripriya for Mr.V.Raghavachari
For R1 : Mr.K.Govi Ganesan
R2 and R3 : served

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 12.03.2012 in I.A.No.5 of 2012 in O.S.No.259

of 2010 on the file of the Principal Sub-Court, Chengalpet.

2.The first respondent herein as a plaintiff filed a suit for specific performance on the basis of unregistered sale agreement dated 17.11.2004. During pendency of the suit, the revision petitioner, who is the third party to the suit, has come forward with an application in I.A.No.5 of 2012 under Order 1 Rule 10(2) C.P.C. to implead him as proposed third defendant in the suit for proper adjudication stating that a portion of suit property belongs to him and in respect of the same, he has already filed several suits against the plaintiff and the defendants before the competent authority. Hence, he is a proper and necessary party for proper adjudication of the present suit for specific performance. The trial court after hearing both sides, dismissed the application, against which, the present revision has been preferred by the proposed party.

3.Learned counsel for the revision petitioner/proposed party submits that the revision petitioner is having right over the portion of the suit property and that he is a necessary party to decide the issue in respect of the suit for specific performance. That factum was not considered by the trial Court. To substantiate his arguments, he relied upon the following decisions :

(i) (2007) 10 SCC 82 (Sumtibai and others v. Paras Finance Co. Registered Partnership firm Beawer (Raj.) through Mankanwar (Smt) w/o Parasmal Chordia (Dead) and others);

(ii) (2011) 1 MWN (civil) 459 (Soundararajan v. H.Mahitha);
and prays for allowing of the revision.

4.Resisting the same, learned counsel for the first respondent/plaintiff submits that the suit is for specific performance and on the basis of the contract, a sale agreement was entered into between the first respondent and respondents 2 and 3 herein. Section 19 of the Specific Relief Act deals with who are parties to the suit for specific performance. Since there is no privity of contract between the plaintiff and the revision petitioner, who is a third party, he is not a necessary party for proper adjudication of the suit. He further submits that the suit is of the year 2008, after it was transferred and renumbered in the year 2010, chief-examination of P.W.1 was done and his cross-examination has to be conducted. After one year only, the revision petitioner, who was set up by the defendants, filed the application to implead himself as a party to the suit, only with a view to drag on the proceedings. To substantiate

his arguments, he relied upon the decision in (Kasturi v. Iyyamperumal and others) reported in 2005 (2) CTC 676 and prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The first respondent herein as a plaintiff filed the suit for the following reliefs:

"(i) for specific performance of the contract directing the defendants to execute and register the sale deed to plaintiff in respect of the suit property within the time to be specified by the Court and receive from him Rs.35,000/- the balance of sale consideration and in default, the Court itself to execute and register the sale deed to the plaintiff on behalf of the defendants;

(ii)for delivery of possession and other reliefs;"

7.In the plaint, it was stated that both the defendants, who are mother and son, agreed to sell the suit property to the plaintiff and that both the parties entered into a sale agreement dated

17.11.2004. The plaintiff has paid Rs.6,00,000/- as advance as recited and out of total sale consideration of Rs.8,15,000/-, a total sum of Rs.7,80,000/- was paid by the plaintiff to the defendants. The balance sale consideration payable by plaintiff to the defendants is only Rs.35,000/-. Even though the plaintiff is ready and willing to perform his part of contract, for which, he demanded the defendants, the defendants are not ready to execute the sale deed. Therefore, the plaintiff was constrained to file the suit after issuance of notice.

8.The second defendant filed a written statement stating that he did not enter a sale agreement with the plaintiff. Even in the additional written statement, he never stated that there was a litigation between the proposed party and the defendants. It is an admitted fact that after framing issues, P.W.1 was examined, during that time, the proposed party has filed the present application stating that he is having right over the portion of the suit property. But he did not file any document to prove the same.

9.Section 19 of the Specific Relief Act deals with who are parties to the suit for specific performance. So it is appropriate to

incorporate Section 19, which runs as follows:

“19. Relief against parties and persons claiming under them by subsequent title. __ Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against __

- (a) either party thereto;
 - (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
 - (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
 - (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
 - (e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:
- Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

10. At this juncture, it is appropriate to consider the decisions relied upon by the learned counsel for the revision petitioners:

(i) In **2007 10 SCC 82 (Sumtibai and others v. Paras Finance Co. Registered Partnership firm Beawer (Raj.) through Mankanwar (Smt) w/o Parasmal Chordia (Dead) and others)**, in para-14, it is held as follows:

“14. In view of the aforesaid decisions we are of the opinion that Kasturi case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.”

In the above decision, the decision reported in **(Kasturi v. Iyyamperumal and others) in 2005 (2) CTC 676** has been distinguished and it was held that in the suit for specific performance, the party who claim title over the property is a

necessary party. Learned counsel for the first respondent has also relied upon the Kasturi case.

(ii) In **(2011) 1 MWN (civil) 459 (Soundararajan v. H.Mahitha)**, in para-7, it is held as follows:

"7. In this case also, it cannot be stated that the first respondent had no semblance of title. Whether the first respondent can claim any right over the suit property can be decided only during trial. Having regard to the fact that the first respondent claims share in the suit property and also to the fact that the suit property was ancestral property in the hands of the second respondent, to have binding decree, the first respondent is a necessary party to the proceedings and the Court below has rightly allowed the application. Hence, I do not find any reason to interfere with the order of the Lower Court and this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs."

11.Learned counsel for the first respondent has relied upon the decision reported in **(Kasturi v. Iyyamperumal and others) in 2005 (2) CTC 676**, wherein, para-6, 8, 10 and 21 are extracted

hereunder:

"6. In our view, a bare reading of this provision namely, second part of Order 1, Rule 10, sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are: (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

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.

10. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the

controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker Vs. Small*, 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

[Emphasis supplied]

21. For the reasons aforesaid, in our view, 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. "

12. As per Section 19 of the Specific Relief Act and the decision reported in Kasturi's case, parties in the suit for specific performance of contract for sale or parties to contract for sale, if they are dead, their legal representatives and subsequent purchasers are necessary parties to the proceedings. In the case on hand, the proposed party/revision petitioner is claiming adverse title to the respondents 2 and 3/defendants, who entered into a sale agreement with the first respondent. In such circumstances, I am of the view, the decisions relied upon by the learned counsel for the revision petitioner are not applicable to the facts of the present case.

13. Applying the dictum laid down in Kasturi's case, I am of the opinion, the trial Court has rightly considered Section 19 of the Specific Relief Act and came to the correct conclusion. Therefore, the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, Civil Revision is dismissed.

At this juncture, learned counsel for the first respondent sought for early disposal of the suit, as P.W.1's evidence has already been over. Hence, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order, after giving fair opportunity to both sides. No costs. Consequently, connected Miscellaneous Petition is closed.

20.01.2016

Index:Yes/No
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To

The Principal Sub-Court, Chengalpet.

R.MALA,J.

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