

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.(PD) No.1222 of 2017
and C.M.P.No.5797 of 2017

S.K.Sunthararajan

.. Petitioner

..VS..

1.V.K.Rajendran

2.V. Mohanraj

3.M.Leelavathi

4.M.Rajakumaravadivel

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the Additional District Judge's Court at Namakkal, dated 05.08.2016 in I.A.No.4 of 2016 in O.S.No.7 of 2012.

For Petitioner : Mr.P.Valliappan

ORDER

This civil revision petition arises out of an order in an interlocutory petition for impleadment in a specific performance suit.

2. Specific performance suit, out of which, this civil revision petition arises, is O.S.No.7 of 2012 on the file of the Additional District Judge's Court, Namakkal.

3.The suit has been filed by the first respondent before me i.e., V.K.Rajendran against respondents 2 to 4 before me viz., V.Mohanraj, M.Leelavathi and M.Rajakumaravadivel arraying them as three defendants.

4.One Mr.S.K.Sunthararajan, who is the revision petitioner before me filed an implead petition being I.A.No.4 of 2016. This implead petition was filed invoking Order I Rule 10 of Civil Procedure Code, 1908 (hereinafter referred as 'C.P.C.' for brevity). Primary contention of S.K.Sunthararajan is that he has also filed a specific performance suit with regard to the same suit property against the three defendants mentioned above adding two others as defendants 5 and 6.

5.It is also the case of the revision petitioner that he has paid substantial amount of money towards advance and part payment of consideration and therefore, he has valuable rights.

6. It is not in dispute that the specific performance suit filed by the revision petitioner before me is O.S.No.127 of 2012 and the same has been

filed on 30.05.2012. Therefore, revision petitioner's specific performance suit is a subsequent suit. The other suit is O.S.No.7 of 2012 and the plaint is dated 18.01.2012.

7.It is also seen from the records that both suits are in the same Court.

8.From here on, for the sake of convenience and clarity, O.S.No.7 of 2012 is referred to as the first suit and O.S.No.127 of 2012 is referred to as the second suit.

9.Learned trial Judge, took up the above said implead petition in the first suit and dismissed the same after full contest.

10. One of the primary grounds on which the implead petition under Order I Rule 10 C.P.C. was dismissed, was that there was an order for joint trial of the first suit and the second suit and therefore, it is not necessary to implead the revision petitioner as one of the defendants in the first suit.

11. In the course of so dismissing the implead petition, learned trial Judge has also examined the question as to whether the revision petitioner before me is a proper party and/or necessary party and answered these in the

negative (answered it against the revision petitioner). It is clarified that the revision petitioner will not only be a proper party, but will also be a necessary party. He has filed specific performance suit with regard to same suit property and his implead prayer is predicated on the fact that he has paid substantial payment of money towards advance and part payment of consideration. While clarifying this position, I hasten to add that dismissal of the implead petition by the trial Court, on the basis that joint trial of the first suit and second suit have been ordered, is correct.

12. It is also not in dispute before me that trial (joint trial) has not commenced in the first and second suits.

13. Both the suits are now ready to be kicked off qua trial, as issues have been framed.

14. Therefore, in my considered view, no prejudice has been caused to the revision petitioner before me by the implead petition being dismissed. The reason is that the implead petitioner before me is now before the trial Court, wherein both the suits have not only been consolidated and tagged, but joint trial has alone been ordered. All the documents relied upon by the learned counsel for the petitioner shall be produced in the trial Court. Oral evidence

can be let in therein. All oral and documentary evidence that is put against him can also be assailed by him in the trial in a manner known to law. It is for this reason, I am of the view that no prejudice would be caused to the revision petitioner by the dismissal of the implead petition.

15. The clarification supra in this order that the revision petitioner before me is not only a proper party, but also a necessary party has been made only for the limited purpose of ensuring that findings in the order called in question before me is not put against the revision petitioner later. In other words, that finding alone is vacated, but the out come of dismissal of the implead petition is confirmed.

16. Civil Revision Petition fails and is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

04.04.2017

Index:Yes/No

kj

To

The Additional District Judge's Court at Namakkal.

M.SUNDAR, J.

kj

C.R.P.(PD) No.1222 of 2017
and C.M.P.No.5797 of 2017

04.04.2017

<http://www.judis.nic.in>