

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1601 of 2017
& C.M.P.No.7881 of 2017

Dhanupriya

.. Petitioner

Vs.

1.V.K.Palanisamy
2.Chinnasamy
3.A.N.Sivakumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 10.11.2016 made in I.A.No.174 of 2016 in O.S.No.59 of 2012 on the file of the learned Subordinate Judge, Gobichettipalayam.

For Petitioner : Mr.P.R.Shankar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 10.11.2016 made in I.A.No.174 of 2016 in O.S.No.59 of 2012 on the file of the learned Subordinate Judge, Gobichettipalayam.

2. The petitioner is the third party, first respondent is the plaintiff and respondents 1 and 2 are the defendants in O.S.No.59 of 2012 on the file of the learned Subordinate Judge, Gobichettipalayam. The first respondent filed the suit for specific performance based on the agreement of sale dated 15.05.2009 executed by the second respondent to sell the suit schedule property. Subsequently, second respondent sold the suit property to the third respondent. Second respondent admitted execution of agreement of sale dated 15.05.2009, but denied that he executed the sale deed in favour of the third respondent. The third respondent denied the contention of both the respondents 1 and 2. While so, the petitioner, who is the third party to the suit, filed an application in I.A.No.174 of 2016 under order I Rule 10(2) of C.P.C for impleading herself as third defendant in the suit on the ground that her grand father, who is the original owner of the property, had settled the suit property in her favour by the settlement deed dated 05.05.2005. Subsequently, her grandfather cancelled the settlement deed executed in her favour and settled the property on the second respondent and others. The settlement in favour of the second respondent is not valid and second respondent has no right over the suit property. In the circumstance, the petitioner is necessary and

proper party to the suit and in order to avoid multiplicity of proceedings, the petitioner ought to be impleaded as party defendant.

3. The first respondent filed counter affidavit and opposed the said application. According to the first respondent, the suit is for specific performance based on the agreement of sale dated 15.05.2009 and petitioner is not necessary party in the suit. The cause of action for the claim of the petitioner is different from the cause of action for the relief sought for in the present suit.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that in the suit for specific performance, title of the petitioner cannot be decided and it is for the first respondent to prove that he is entitled for specific performance of agreement of sale.

5. Against the order of dismissal dated 10.11.2016 made in I.A.No.174 of 2016, the present civil revision petition is filed by the petitioner/third party.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. The grievance of the petitioner is that the learned Judge failed to appreciate the scope of Order 1 Rule 10(2) of C.P.C. and the fact that the petitioner is the owner of the property and she has obtained decree against the second respondent. These contentions are not relevant to the suit to implead the petitioner as third defendant in the relief sought for in the present suit. As rightly contended by the first respondent, the cause of action for the claim of the petitioner is entirely different from the cause of action for the relief sought for in the present suit for specific performance of agreement of sale.

8. In the circumstance, the learned Judge considering all the materials available on record dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 10.11.2016.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.06.2017

Index : Yes/No

dm/kj

To

The Subordinate Judge,
Gobichettipalayam,
Erode District.

V.M.VELUMANI, J.

dm/kj

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