

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4364 of 2015
& M.P.No.1 of 2015

R.Rajendran

.. Petitioner

Vs.

1.R.Subramaniam

2.S.Anandraj

3.S.Chitradevi

4.The Sub-Registrar, Sulur.

5.V.Balasubramaniam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the learned V Additional District Judge, Coimbatore dated 26.06.2015 made in I.A.No.396 of 2014 in O.S.No.606 of 2012.

For Petitioner : Mr.A.Sivaji

For R1 to R3 : Mr.P.M.Duraiswamy

For R4 : No appearance

For R5 : Mr.S.Lakshmanasamy

ORDER

This Civil Revision Petition is filed against the fair and decretal order of the learned V Additional District Judge, Coimbatore dated 26.06.2015 made in I.A.No.396 of 2014 in O.S.No.606 of 2012.

2.The petitioner is plaintiff, respondents 1 to 4 are the defendants and 5th respondent is the proposed party in O.S.No.606 of 2012 on the file of the V Additional District Judge, Coimbatore. The petitioner filed the said suit against the respondents 1 to 4 for specific performance of the agreement of sale or in alternate return of advance amount, recovery of possession and perpetual injunction. The respondents 1 to 3 have filed written statement on 04.02.2013 and are contesting the suit. Pending suit, the petitioners filed I.A.No.854 of 2013 for amendment of the plaint seeking alternative prayer to refund advance amount and for a charge over the suit property. The petitioner has come out with the present application in I.A.No.396 of 2014 to implead the 5th respondent as 5th defendant in the suit. According to the petitioner, at the instance of first respondent, the petitioner gave a cheque for a sum of Rs.3,00,000/- to the 5th respondent as part of sale consideration. According to the petitioner, the respondents 1 to 3 denied having instructed the petitioner to pay Rs.3,00,000/- to the 5th respondent. The petitioner issued a notice dated 05.04.2014 to the 5th respondent and respondents 1 to 3, calling upon the 5th respondent to repay the said sum of Rs.3,00,000/- together with interest. The respondents 1 to 3 received the said notice on 07.04.2014 and 5th respondent received the said notice on 09.04.2014. They have not

sent any reply. In view of the same, the 5th respondent is necessary party to the suit.

3.The respondents 1 to 3 filed counter affidavit and denied all the allegations. The respondents 1 to 3 denied that the first respondent gave instruction to the petitioner to pay a sum of Rs.3,00,000/- to the 5th respondent. The petitioner has come out with the present petition only to black mail the first respondent and his family members to his illegal terms settled. The petition filed by the petitioner is abuse of process of law. The petitioner is unnecessarily linking his private transaction with proposed party as if the same took place in the alleged agreement of sale and also contended that only to delay the proceedings, the petitioner has come out with the present application and prayed for dismissal for the said application.

4.The 5th respondent filed separate counter affidavit and contended that the petitioner is a professional money lender. The 5th respondent borrowed a sum of Rs.3,00,000/- from the petitioner as hand loan and he has repaid the said within one month. The fifth respondent has nothing to do with the transaction between the petitioner and respondents 1 to 3 and he is not aware of the legal

proceedings with regard to agreement of sale. It is not correct to state that petitioner gave cheques at the instruction of the first respondent to the 5th respondent. The stand taken by the petitioner is that, he is not aware of the legal proceedings and the same stand taken by the respondents 1 to 3 in the written statement. The 5th respondent is not a mediator in between the respondents 1 to 3 with regard to the agreement of sale.

5.Before the learned Judge, no evidence was let in by the parties. The petitioner marked 4 documents as Exs.P1 to P4. The learned Judge, considering the averments in the affidavit, counter affidavit and documents marked by the petitioner, dismissed the application, holding that the 5th respondent is not necessary party to the suit.

6.Against the said order dated 26.06.2015 made in I.A.No.396 of 2014 in O.S.No.606 of 2012, the present Civil Revision Petition is filed by the petitioner.

7.Heard the learned counsel for the petitioner as well as the respondents 1 to 3 and 5 and perused the materials available on record.

8.The learned counsel for the petitioner reiterated the averments raised in the affidavit and contentions raised in the grounds of revision. In support of his contentions, he relied on the judgment reported in **2015 (4) CTC 293 (Devaki Thiyagarajan Vs. Ahamed and others):**

"61.In so far as this Appeal is concerned, we understand that the real fight between the appellant/proposed 5th plaintiff and the first respondent/D5.

62.The object of the Order 1, Rule 10(2), C.P.C to implead a third party to the suit is that the dispute in the suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

63.Under Order 1, Rule 10, C.P.C. A party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the suit and then he can be impleaded."

9.The learned counsel for the respondents 1 to 3 reiterated the averments in the counter affidavit filed in I.A and relied on the following judgments reported in:

(i)2008 6 CTC 630 (Saivasamy Thevar(Died) and 4 others Vs. Rajasekaran and 3 others):

"7. In a recent judgment in Bharat Karsondas Thakkar Vs. Kiran Construction Co. reported in 2008 (6) Scale 355, the Apex Court reiterated the legal position that a suit for specific performance could not be enlarged to convert the same into a suit for title and possession and as such, a third party or a stranger to the contract could not be added in a suit for specific performance so as to convert the suit of one character into a suit of a different character."

(ii) 2010 3 CTC 480 (Krishnan Vs. P.Palanisamy and others):

"10. In a suit for specific performance of a contract for sale a third party to the agreement is not entitled to get impleaded, as such impleadment would enlarge the scope of the suit. The lis between the parties to the agreement can only be gone into and it would not be open to the trial Court to decide whether a third party had acquired any title or possession of the suit property, as such an issue would not be germane to a decision in the suit for specific performance of a contract for sale."

(iii) 2008 AIR SC 2134 (Bharat Karsondas Thakkar Vs. Kiran Construction Co. and others):

"25. In that view of the matter, although, we are setting aside the order of the Division bench of the High Court impugned in this appeal, the respondent no.1 may, if so advised, file a separate suit to challenge the consent decree in view of the fact that

he had been pursuing his claim before the wrong forum."

(iv) **1995 3 SCC 147 (Anil Kumar Singh Vs. Shivnath**

Mishra Alias Gadasa Guru):

"8.The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party for effectually and completely adjudicate upon and settle all the question involved in the suit. The question before the Court in suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance."

(v) **2005 AIR SC 2813 (Kasturi Vs. Iyyamperumal and**

others):

"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."

10.From the materials on record, it is seen that the petitioner

issued notice dated 05.04.2014 marked as Ex.P4, calling upon the

5th respondent to repay the sum of Rs.3,00,000/-. The 5th respondent sent a reply dated 15.04.2014, marked as Ex.P1 and petitioner sent a rejoinder dated 21.04.2014, marked as Ex.P2. From the averments in the affidavit filed by the petitioner in the present I.A and from the impugned order of the learned Judge, it is seen that the petitioner has issued notice, Ex.P4 to the 5th respondent calling upon him to repay the sum of Rs.3,00,000/-. From the counter affidavit filed by the 5th respondent and Ex.P4, it is seen that the 5th respondent had denied that he is liable to pay any amount to the petitioner. The petitioner has also sent a rejoinder dated 21.04.2014, marked as Ex.P2. These averments show that petitioner has called upon 5th respondent to repay the sum of Rs.3,00,000/- and it was denied by the 5th respondent. In view of the above fact, the 5th respondent is not a necessary or proper party in the present suit filed against the respondents 1 to 3 for specific performance of agreement of sale dated 04.03.2012. In view of the relief sought for in the present suit, the judgment relied on by the learned counsel for petitioner do not advance his case. The judgments relied on by the learned counsel for the 5th respondent is applicable to the facts of the present case.

11.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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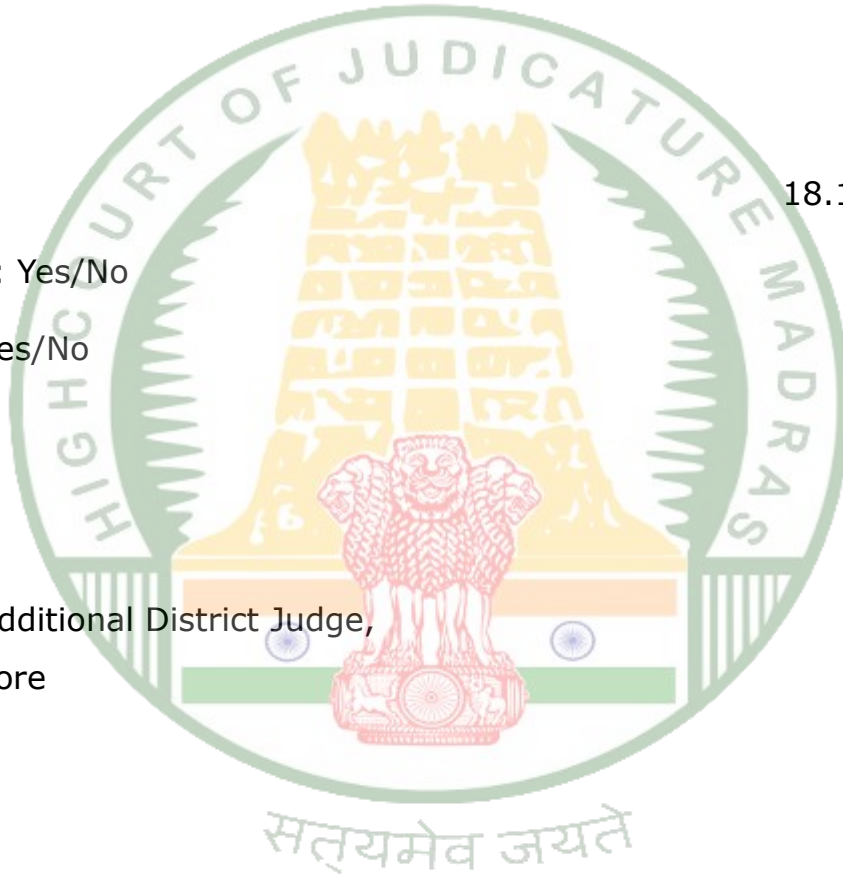
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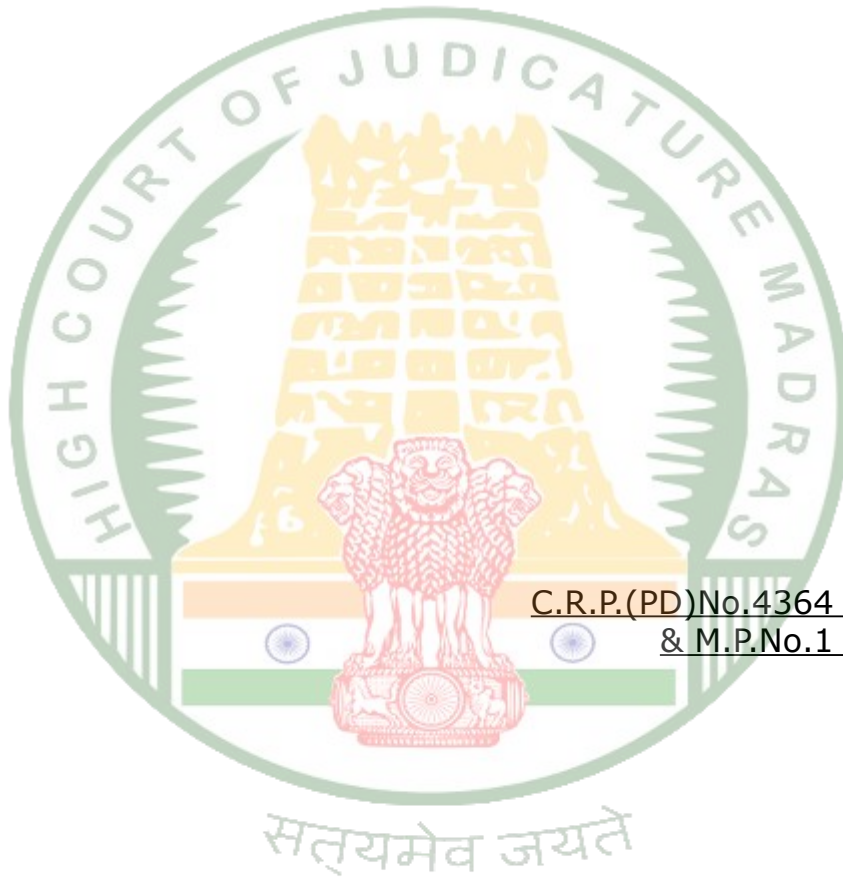
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