

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.07.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRP (PD) No.2398 of 2013
and
M.P.No.1 of 2013

Paul

.. Petitioner

Vs.

1. V.Arumugam
2. A.Revathi

.. Respondents

PRAYER: Revision Petition under Article 227 of the Constitution of India against the order dated 22.01.2013 made in I.A.No.35 of 2011 in O.S.No.51 of 2010 passed by the learned Principal Sub Judge, Puducherry.

For Petitioner : Mr.R.Thiagarajan

For Respondents : No appearance (for R1)

Mr.S.C.Vishwanth (for R2)

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ORDER

The unsuccessful plaintiff in the suit has filed this revision petition challenging the order dated 22.01.2013 made in I.A.No.35 of

2011 in O.S.No.51 of 2010 passed by the learned Principal Sub Judge, Puducherry.

2. The brief facts of the case, so far as they are relevant for the disposal of the revision, are as follows: The petitioner has filed a suit in O.S.No.51 of 2010 on the file of the Principal Subordinate Judge, Puducherry, seeking, *inter alia*, a decree of specific performance directing the first respondent to execute the sale deed in favour of the petitioner conveying the title and possession of the suit property absolutely on acceptance of the balance sale consideration.

3. In the said suit, the first respondent herein filed a written statement specifically denying the execution of the sale agreement as well as the receipt of a sum of Rs.60,000/- towards part consideration. It has been further stated that the first respondent had settled the suit schedule property in favour of his wife on 25.01.2010 vide a registered settlement deed.

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4. Thereafter, the petitioner filed I.A.No.35 of 2011 in the said suit seeking impleadment of A.Revathi (wife of the first respondent herein) as the second respondent in the suit.

5. The said application was resisted by the respondents herein by filing separate counter affidavits.

6. The learned Principal Sub Judge, Puducherry, by order dated 22.01.2013, dismissed the said application seeking impleadment on the ground that the scope of the suit for specific performance could not be enlarged to covert the same into a suit for title and possession. Assailing the said order, the present revision is filed.

7. The learned counsel for the petitioner contended that the second respondent is a necessary and proper party required for proper and complete adjudication of the /is and the Court below erred in appreciating the object and purpose of Order 1 Rule 10 of the Code of Civil Procedure in its proper perspective.

8. He further contended that the first defendant with fraudulent intention, in order to resile from the sale agreement, settled the property in favour of the second respondent and, therefore, the second respondent is a necessary and proper party for complete adjudication of the suit. To fortify the said plea, he placed reliance on a decision of this Court in *U.Sumathy v. Santhi and others, 2011 (3) MWN (Civil)*

571, wherein it is held that person who has direct interest in subject matter of suit for specific performance of agreement of sale may be impleaded as proper party under Order 1 Rule 10 of the Code of Civil Procedure.

9. The learned counsel for the second respondent, while reiterating the reasons that weighed the court below in dismissing the interlocutory application, placed reliance on a decision of this Court in *Krishnan v. P.Palanisamy*, (2010) 6 MLJ 371, wherein it has been held as under:

“11. For the impleadment of a third party, in a suit for specific performance, there must be a right to some relief against the party seeking impleadment, in respect of the controversies involved in the proceedings. Further, the following tests must be satisfied to implead a third party in a suit for specific performance:

(a) that there must be a right to some relief against such party in respect of the controversies involved in the proceedings; and

(b) that his presence should be necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

Impleadment of a third party cannot be allowed to change the character or the nature of the suit filed for.

specific performance of an agreement for sale. When the Plaintiff in the suit for specific performance of the agreement for sale is the 'dominus litis' he cannot be forced to add parties, against whom he does not seek any relief, unless it is a compulsion of the rule of law."

(Emphasis supplied)

10. I heard Mr.R.Thiagarajan, learned counsel for the petitioner and Mr.S.C.Vishwanth, learned counsel for the second respondent and perused the documents available on record. No representation on behalf of the 1st respondent.

11. Order 1 Rule 10 (2) of the Code of Civil Procedure covers two types of cases, to wit (i) of a party who ought to have been joined, but not joined and is a necessary party; and (ii) of a party without whose presence the question involved in the case cannot be completely decided. The former is called a necessary party and the latter a proper party. In other words, a necessary party is one whose presence is indispensable to the constitution of the suit, against whom the relief is sought and without whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

12. In the case on hand, the first respondent is denying the execution of the sale agreement and receipt of consideration from the petitioner. On the other hand, he categorically states that he has settled the property to the second respondent. At this stage, if this Court expresses any opinion on the merits of the said aspect, it will prevail upon the trial Court.

13. In any event, the fact remains that in a suit for specific performance, the questions to be decided are: (a) Whether the sale agreement has been validly executed; (b) Whether the sale agreement is enforceable; (c) Whether the plaintiff is ready and willing to perform their part of the contract; and (d) Whether the plaintiff is entitled to get the equitable remedy of specific performance, as has been held by this Court in *Leelavati v. Sri Venkateswara Finance*, 2009 (7) MLJ 761.

14. In the case on hand, admittedly, the petitioner had sought for specific performance of an agreement for sale entered into with the first respondent. The Court below has to consider whether the sale agreement has been validly executed and/or enforceable. Apart from that, the trial Court should also consider whether the plaintiff is willing

to perform his part of the contract and whether the plaintiff is entitled to get the equitable relief of specific performance. In the suit, the petitioner has not challenged the settlement deed executed by the first respondent in favour of the second respondent, which is much prior to the date of the alleged sale agreement.

15. In *U.Sumathy case*, referred supra, relied on by the learned counsel for the petitioner, the plea was that pending litigation the property was sold to third party with ulterior motive to deprive the right of the plaintiff. However, in the case on hand, it is the case of the petitioner that as early as 25.01.2010, he has settled the suit scheduled property in favour of his wife, much earlier even to the cause of action that led to the filing of the suit, namely the alleged sale agreement dated 01.02.2010, the veracity of which is yet to be decided by the trial Court.

16. In a suit for specific performance, the issue to be decided is the enforceability of the agreement entered into between the parties and whether the plaintiff was/is ready and willing to perform his part of the contract and whether he is entitled to a decree for specific performance of a contract against the defendant. The scope of suit for

specific performance of the sale agreement cannot be enlarged from the suit for specific performance to a suit for title and possession which is impermissible in law. To decide the right, title and interest in the suit property of the stranger to the agreement is beyond the scope of the suit for specific performance of the agreement and the same cannot be turned into a regular title suit. Therefore, the third party or a stranger to the sale agreement cannot be added, so as to convert a suit of one character into a suit of different character.

17. There is no cause of action in the suit filed by plaintiff against the second respondent. The trial Court cannot decide the question whether the second respondent is the owner of the property or not in a suit for specific performance and permitting such impleadment would convert the suit for specific performance into a suit for declaration of title of the suit schedule property and, virtually, alter the nature of the suit. Therefore, in my considered opinion, the proposed party is not a necessary party to adjudicate the dispute effectively between the parties. Hence, the trial court is justified in dismissing the application for impleadment. The same is in accordance with law. The petitioner has not made out any ground to interfere with the impugned order under Article 227 of the Constitution of India.

18.In the result:

(a)this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.35 of 2011 in O.S.No.51 of 2010, dated 22.01.2013 passed by the learned Principal Sub Judge, Puducherry;

(b)the Court below is directed to dispose of the suit in O.S.No.51 of 2010 within a period of four months from the date of receipt of a copy of this order, without granting any unnecessary adjournments to either parties and both the parties are directed to give their fullest co-operation for early disposal. No costs. Consequently, M.P.No.1 of 2013 is closed.

21.07.2017

Note:Issue order copy on 02.01.2018
vs

Index : Yes
Internet : Yes

To

The Principal Sub Judge
Puducherry.

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M.V.MURALIDARAN,J.

vs



Pre-delivery order made in
C.R.P. (PD) No.2398 of 2013
and
M.P.No.1 of 2013

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