

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2017

Coram

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.2364 of 2012
and M.P.No.1 of 2012

S.SenthilKumar @ Pasupathy ...Petitioner/Plaintiff

Vs.

1. T.Subramanian
2. Revathy

...Respondents/Defendant
& III Party

Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Fair and decreetal order dated 05.01.2012 passed in I.A.No.731/11 in O.S.No.26 of 2010 on the file of the Additional Sub Judge, Puducherry.

For Petitioner : Mr.T.S.Baskaran
For Respondents : Mr.K.P.Jotheeswaran
for R1
M/s.Usha Ramman
for R2

O R D E R

This Civil Revision Petition has been filed to set aside the order dated 05.01.2012 passed in I.A.No.731/11 in O.S.No.26 of 2010 on the file Additional Sub Judge, Puducherry.

2. The petitioner is the plaintiff, the first respondent is the defendant and the second respondent is the proposed party in the suit filed in O.S.No.26 of 2010 before Additional Sub Court, Puducherry. The petitioner filed the above suit against the first respondent for specific performance of the agreement of sale dated 05.01.2012. The 2nd respondent file I.A.No.731 of 2011 in O.S.No.26 of 2010 for impleading herself as second defendant in the said suit. According to the second respondent, even before filing of the suit, she has purchased 170 Sq.ft. in the suit property by a sale deed dated 16.11.2011 and entered into an oral agreement with the first respondent to purchase the remaining extent of the property. In view of the same, she is necessary and proper party to the suit.

3. The petitioner filed counter and submitted that the agreement is between the petitioner and the first respondent and suit is to enforce the said agreement of sale. In the said circumstances, the second respondent is not a necessary party. The first respondent filed counter and submitted that both the petitioner and the second respondent have encroached portion of the property. The husband of the second respondent encroached 170 sq.ft of land and constructed house. The petitioner was forced to compromise the matter with the husband of the second respondent and the first respondent executed a Power of Attorney appointing the second respondent as his power agent who sold the property to his wife by sale deed dated 16.11.2000. Therefore, the petitioner is not a necessary and proper party to the suit. The property sold to the second respondent is not a part of the suit property. The learned Judge, considering the averments in the affidavit and counter affidavit, allowed the application.

4. Against the order dated 05.01.2012 made in I.A.No.731 of 2011 in O.S.No.26 of 2010, the petitioner has filed the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner submitted that the petitioner has filed suit for specific performance for agreement of sale. The agreement is between the petitioner and the first respondent. In a suit for specific performance, third party is not a necessary and proper party. The issue to be decided in the suit is with regard to genuineness of the agreement of sale and whether the petitioner as a plaintiff is always ready and willing to perform his part of contract. The second respondent is claiming ownership in respect of 170 sq.ft. in suit schedule property. By impleading the second respondent, the scope of the suit is being enlarged to decide the title of the second respondent. In view of these facts, the second respondent is not a necessary and proper party. The learned Judge, without properly appreciating the above facts has allowed the application on the ground that in the interest of justice and to avoid multiplicity of proceedings and to give opportunity to the second respondent.

6. The learned counsel for the petitioner relied on the following judgments in support of his contentions -

(i) AIR 2005 Supreme Court 2813 (1) [Kasturi v. Iyyamperumal and others]

14. As discussed herein earlier, whether respondent Nos.1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the

presence of respondent Nos.1 and 4 to 11 before the Court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos.2 and 3 and whether contract was executed by the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. It is an admitted position that the respondent Nos.1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, the respondent Nos.1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of Vijay Pratap & Ors. Vs. Sambhu Saran Sinha & Ors. reported in 1996(10) SCC, 53, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the respondent Nos.2 and 3 and in favour of the appellant for specific

performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos.1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinbefore, since the respondent Nos.1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos.1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being the respondent Nos.1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

15. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff/appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to

convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos. 2 & 3 and Respondent Nos. 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos.1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, the respondent Nos.1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.

2. 2008 (6) CTC 630 [Saivasamy Thevar (died) & 4 others vs. Rajasekaran and 3 others]

6. Admittedly the Suit in O.S.No.170 of 2001 is for a decree for Specific Performance. The basis for filing the said Suit is a sale agreement executed by the fourth respondent with the revision petitioner on 17.04.1997, in and by which the fourth respondent agreed to sell the suit property to the first petitioner, since deceased. The lis involved in the matter is between the deceased first petitioner and the fourth respondent. The alleged right of the respondents 1 to 3 pertaining to the suit property is altogether a different matter to be agitated by them in an appropriate proceeding. The present Suit being one for Specific Performance, the only issue to be decided is about the enforceability of the agreement in question. Such being the position, I am of the view that the learned Trial Judge committed a serious error in impleading the respondents 1 to 3 as party to the Suit in O.S.No.170 of 2001.

9. The learned Trial Judge appears to have allowed the Application filed by the respondents 1 to 3 for impleading them as a party to the preceeding in a casual manner without making an attempt to see as to whether the junction of the parties sought to be impleaded is absolutely necessary for the disposal of the Suit in one way or the other. The right claimed by the respondents 1 to 3 is not related to the claim made by the revision petitioner and as such, the respondents 1 to 3 are unnecessary parties to the Suit filed by the revision petitioner for a decree of Specific Performance. Therefore, I do not find any reason to sustain the order of the learned Trial Judge and accordingly, I am constrained to set aside the order dated 10.10.2003 in I.A.No.119 of 2003 in O.S.No.170 of 2001.

7. The learned counsel for the first respondent submitted that the second respondent is not a necessary and proper party in the suit filed by the petitioner since, 170 sq.ft. claimed by the second respondent is not a part of the suit property. The first respondent has filed a suit in O.S.No.138 of 2009 for declaration and recovery of possession against the petitioner on the ground that he has encroached the suit property. In that suit also, the second respondent has filed an application in I.A.No.80 of 2011 for impleading herself as second defendant. The said application was allowed. Against the said order, the first respondent has filed CRP No.2602 of 2012 before this Court. The learned Judge, without properly appreciating the facts, allowed the application without giving any valid reason.

8. The learned counsel appearing for the 2nd respondent submitted that the second respondent has purchased 170 sq.ft. in the suit schedule property and she is an agreement holder for the remaining extent of suit property. In view of the same, she is necessary and proper party to the suit. The learned Judge has rightly ordered the application for impleading the second respondent as second defendant.

9. Heard the learned counsels appearing for the petitioner as well as respondents and perused the materials available on record.

10. It is an admitted case that the petitioner has filed the suit for specific performance of agreement of sale against the first respondent. It is well settled that in a suit for

specific performance, issues to be decided are whether the agreement of sale is genuine or not and whether the plaintiff is always ready and willing to perform his part of the contract, whether the plaintiff has sufficient means to perform his part of the contract. A claim of third party that he or she is owner of the property or agreement holder for purchase of suit property cannot be decided in a suit for specific performance. In the two Judgments relied on by the learned counsel for the petitioner, it has been held that by impleading a person like second respondent, the scope of the relief sought for in the suit is enlarged from the suit for specific performance to that of suit for title. The two judgments referred to above by the learned counsel for the petitioner are squarely applicable to the facts of the present case. In view of the ratio of the said judgments, the learned Judge has committed irregularity and illegality in allowing the application filed by the second respondent.

11. The learned Judge has not considered the scope of the relief sought for in the suit filed by the petitioner and whether the second respondent is necessary and proper party to the suit for specific performance. Without such consideration, the learned Judge has allowed the application and thereby committed irregularity which is liable to be set aside and it is accordingly set aside.

12. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

raja/rgr

To

The Additional Sub Judge Court,
Puducherry.

+ 1 cc to Mr.T.S. Baskaran, Advocate Sr.54530

+ 1 cc to Ms. Usha Raman, Advocate Sr.55002

+ 1 cc to Mr.K.P. Jotheeswaran, Advocate Sr.55237

C.R.P.No.2364 of 2012

KGK(CO)

EU 31.08.17