

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2017

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP (PD) No.2690 of 2013
and M.P.No.1 of 2013

Mandiram

... Petitioner

Vs.

1.T.Padmavathi
2.T.Yoganathan
3.C.Senthil Prabhu

4.The Managing Director
M/s.V.G.P. Housing Private Ltd.,
No.52, VGP Road,
Saidapet, Chennai - 600 015.
Respondents

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 23.3.2013 made in I.A.No.1348 of 2012 in I.A.No.1348 of 2012 in O.S.No.724 of 2010 on the file of the Court of II Additional District and Sessions Judge, Tiruppur and allow this Civil Revision Petition.

For Petitioners : Mr.N.S.Sivakumar
For Respondents : Mr.S.Saravanan [R1 to R3]
Mr.Suresh [R4]

O R D E R

This is a plaintiff's revision.

2. Defendants 1 and 2 are owners of the property described in the

suit schedule situate in Avinashipalayam Village, Pongalur Panchayat, Tiruppur District. It is stated that the defendants have entered into a sale agreement with the plaintiff on 09.3.2009 to convey the said property. It is also stated that subsequently they have executed a general power deed to third defendant. In pursuance of the same, third defendant stated to have executed a sale deed to the proposed party/4th respondent herein by two sale deeds registered as Doc.Nos.15728 and 15829 of 2010 dated 02.11.2010. Under these circumstances, the plaintiff filed I.A.No.1348 of 2012 under Order 1 Rule 10 CPC to implead the said purchaser of the property as fourth defendant.

3. The trial Court referred to Section 52 of the Transfer of Property Act and dismissed the impleading petition on the ground that the sale in favour of the proposed party was much prior to the filing of the suit.

4. The learned counsel for the petitioner would contend that the sale deed in favour of the proposed party is the outcome of the meeting of the mind of defendants 1 to 3, and the proposed party in prejudicing to the rights of the plaintiff accrued to her under the suit sale agreement. Under such circumstances, his presence in the suit will have a bearing.

5. On the other hand, the fourth defendant would submit that he is an unnecessary party as he has obtained the property much prior to the

filing of the suit and he is a *bona fide* purchaser for value without knowledge of the suit sale agreement.

6. The learned counsel for the respondents 1 and 2 took the stand similar to that of the proposed party.

7. I anxiously considered the rival submissions and perused the impugned order and the material on record.

8. Now the plaintiff is roaming with the sale agreement in his hand and hunting for the property, because as on date for him there is no property, since the proposed party has become the owner of the property by the sale deed executed in his favour by the power holder/third defendant. Where in a litigation if any decision taken will pinch ultimately a party who is not a party to the suit will have a say. He has to protect his interest. If plaintiff walks away successfully in the suit, immediately he will look for the property, in that event the proposed party will be in a difficult situation, then it will be too late for him. Had he been on record in the suit he could have put forth his view to the matter namely he is a *bona fied* purchaser for value without knowledge, more particularly of the sale agreement which was much prior to the filing of the suit. All these aspects he could placed before the Court by way of a written statement. Possibility of one party going to the enemy camp cannot also be ruled out.

In the facts and circumstances, the proposed party will be a proper and necessary party in the ongoing litigation.

9. In view of the above, "this revision succeeds". The impugned order of the learned II Additional District Court, Tiruppur passed in I.A.No.1348 of 2012 in O.S.No.724 of 2010 is set aside.

10. The fourth respondent shall be added as fourth defendant in the suit.

11. Fourth defendant shall be given an opportunity to file his written statement and if need be a party who intends, could also be permitted to file a reply statement. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

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09.03.2017

ds

To:

The II Additional District Court,
Tiruppur.

DR.P.DEVADASS,J.

ds

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