



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(PD) (MD) No.1960 of 2013 and
M.P(MD) .No.2 of 2013

1.Arumugam
2.Rengasamy

: Revision Petitioners/
Respondents1 and 2/Plaintiffs

Vs.

1.Minor Sankar Ganesh
rep. By his natural guardian and
mother Kaleeswari
2.Malliga
3.Dhanapal
4.Arunkumar

: Respondents 1 to 4/Petitioners/
3rd Parties

5.Ganesan
6.Manimuthu
7.Pappathi
8.Veerammal
9.Indira

: Respondents/Respondents/Defendants
5 to 9 3 to 7

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order made in I.A.No.260 of 2011 in O.S.No.164 of 2005 by the Additional Sub Court, Dindigul, dated 10.12.2012.

For Petitioners : Mr. D. Venkatesh

For R3,4,7 and 9 : Dismissed for default 9.9.2016

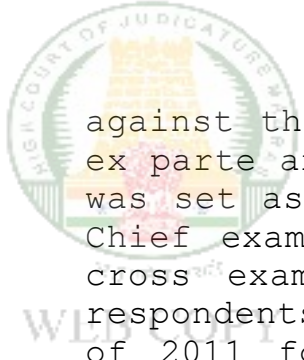
For R1,2,5,6 and 8 : No appearance

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order made in I.A.No.260 of 2011 in O.S.No.164 of 2005 by the Additional Sub Court, Dindigul, dated 10.12.2012.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The petitioners who are the plaintiffs filed suit for specific performance of agreement of sale dated 10.06.2002,



against the respondents 5 to 9. The respondents 5 to 9 were set ex parte and subsequently, on filing petition, the ex parte decree was set aside and filed written statement. Trial commenced. The Chief examination of PW.1 was completed and suit was posted for cross examination of PW.1, by defendants. At that time, the respondents 1 to 4 filed Interlocutory Application in I.A.No.260 of 2011 for impleading themselves as defendants 6 to 9 in the suit.

3. According to the respondents 1 to 4, the suit property is joint family property and they have share in the suit property. They filed suit in O.S.No.307 of 2009 on the file of the Principal Sub Court, Dindigul, for partition against the respondents 5 to 9 and obtained decree. Therefore, they are necessary parties.

4. The petitioners opposed the said application on the ground that the respondents 1 to 4 colluded together and the respondents 5 to 9 and in collusion with respondents 5 to 9, the respondents 1 to 4 filed O.S.No.307 of 2009 against the respondents 5 to 9 and respondents 5 to 9 did not contest the case and remained ex parte and ex parte decree was passed. The petitioners are not party to the said suit in O.S.No.307 of 2009 which is hit by principles of res judicata. The respondents 1 to 4 filed the application only to drag on the proceedings and they are not necessary parties.

5. The learned Judge taking in to consideration of the decree obtained by respondents 1 to 4 in O.S.No.307 of 2009 allowed the application holding that by impleading respondents 1 to 4 no prejudice will be caused to the petitioner.

6. Against the said order dated 10.12.2012, the petitioners have filed the present civil revision petition.

7. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment reported in **2005(6) SC 733 (Kasturi vs. Iyyamperumal and others)**, wherein paragraph no.11 it has been held as follows:-

"11. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all."

8. Though the notice served on the respondents 1,2,5,6 and

8 and their names were also printed in the cause list they have not chosen to appear either in person or through counsel.

9. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

10. From the records it is seen that the suit is filed against the respondents 5 to 9 for specific performance of agreement of sale dated 10.06.2002. Originally an ex parte decree was passed on 06.08.2008, against the respondents 5 to 9. The petitioners also filed E.P.No.16 of 2009 for execution of sale deed. Subsequently, on application by the respondents 5 to 9, ex parte decree was set aside. The first respondent is son of the fifth respondent. The respondents 2 to 4 are the daughters and sons of the respondents 4 and 5. In spite of the same, they have filed O.S.No.307 of 2009 without impleading petitioners and obtained ex parte decree in collusion with respondents 5 to 9. In the nature of relief sought for by the petitioners, the respondents 1 to 4 are not necessary parties to the suit.

11. The learned Judge failed to consider that respondents 1 to 4 have not given any reason for filing petition to implead them in the suit after commencement of trial. The reason given by the learned Judge that the petitioners will not be prejudiced, by impleading respondents 1 to 4 is not valid reason. The learned Judge failed to exercise his power conferred on him properly and committed irregularity in allowing the application warranting interference by this Court. The Judgment relied on by the counsel for the petitioner is squarely applicable to the facts of the present case.

12. In the result, the Civil Revision Petition is allowed and the order made in I.A.No.260 of 2011 in O.S.No.164 of 2005 on the file of the Additional Subordinate Judge, Dindigul, dated 10.12.2012 is set aside. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To
The Additional Sub Judge, Dindigul.

+1 cc to Mr.D.Venkatesh , Advocate in SR.No. 10564

TRP

AE/JC/13.04.2017/3P/3C



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