

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD)No.2445 of 2012

and

M.P.Nos.1 of 2012 & 1 of 2015

R.Saravanan

...Petitioner

Versus

1.Mr.T.J.Salman Sheriff

2.Mohana

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 28.03.2012 made in I.A.No.221 of 2011 in O.S.No.9254 of 2010 on the file of the Additional District and Sessions Court (Fast Track Court No.IV), Chennai.

For Petitioner : Mr.P.Mathivanan

For Respondent - 1 : Mr.S.Vasudevan

Respondent - 2 : Not ready in notice

ORDER

This Civil Revision Petition is filed by the revision petitioner/third party to the proceedings aggrieved by the order dismissing his Application seeking to implead himself as a defendant in the suit for specific performance filed by the first respondent herein.

2. The brief facts necessary for the disposal of this Civil Revision Petition are as follows:

The first respondent had filed a suit originally on the file of this Court in C.S.No.151 of 2007 which was later transferred to the file of the Fast Track Court No.IV, Chennai and renumbered as O.S.No.9254 of 2010 for specific performance of an agreement of sale dated 31.03.2006 entered into between himself and the second respondent herein. The first respondent would contend that second respondent is the owner of the property which is the subject matter of the suit and she had entered into an agreement of sale on 31.03.2006 agreeing to sell the suit property for a total sale consideration of Rs.13,00,000/-. This Agreement was also registered with the

Sub-Register Office, Anna Nagar, Chennai in Document No.1522 of 2006. On the very same day of the registration of agreement, the first respondent had paid a sum of Rs.3,40,000/- as advance and the balance sale consideration was to be paid within a period of three months. On the date of the signing of the agreement of sale, the original documents was also handed over to the first respondent. It is also seen that the first respondent had discharged the loan taken by the second respondent herein from the Union Bank of India by paying a sum of Rs.3,25,000/- thereby leaving a balance of Rs.6,65,000/- in the total sale consideration. The first respondent would contend that he had made several requests to the second respondent to execute the sale deed and also informing that he was ready with the balance sale consideration. However, the second respondent was putting off the sale under one pretext or the other. Therefore, left with no other option, the first respondent had filed a suit after issuing a legal notice dated 02.01.2007. The suit was filed by the first respondent on 13.02.2007.

3. The second respondent herein had filed a written statement denying all the contents of the plaint which included the agreement of sale and the money paid. This written statement was filed on 04.06.2007. In the Written Statement, the second respondent had stated that the agreement was vague since there is a clause which stipulates that the signatures of the children should be obtained and therefore, the same was void under Contract Act, 1872. Pending the above suit, on 08.07.2011, the revision petitioner had come forward with an Application in I.A.No.221 of 2011 seeking to implead himself as the second defendant in O.S.No.9254 of 2010. The reason for seeking to be impleaded has been narrated in paragraph No.3 of the affidavit which is extracted hereinbelow:

"I submit that I already filed O.S.No.500 of 2007, against the second respondent herein and other co-owners for partition of the property which is the subject matter in the above suit and by a decree dated 12.03.2008, by the Hon'ble XVII Assistant Judge, City Civil Court, Chennai has passed partition decree declaring my 1/5 share in

the suit property herein. Therefore, I am very interested in the above suit and in my absence any decision being taken in the above suit, will certainly affect my right and I will be driven for another round of litigation. I am a necessary and proper party in view of the partition decree by a competent court. No prejudice will be caused to the otherside by impleading me as second defendant in the above suit."

4. The said Application was resisted by the first respondent by *inter alia* contending that the property stood in the name of the second respondent and therefore, the suit filed by the revision petitioner is a collusive one and that though the sale agreement was entered into on 31.03.2006, the partition suit was filed only in the year 2007 i.e., after the first respondent had filed a suit for specific performance. The first respondent also contended that the Application is nothing but an abuse of process of law. After hearing both parties, the learned Assistant Subordinate Judge, Fast Track Court No.IV, Chennai had dismissed the said Application. The learned Judge had clearly stated that the revision petitioner had not filed any document whatsoever to show his share in the suit property.

Aggrieved by the said order, the revision petitioner is before this Court.

5. Heard Mr.P.Mathivanan, learned counsel on behalf of the petitioner and Mr.S.Vasudevan, learned counsel for the first respondent.

6. The learned counsel appearing for the petitioner would contend that on 12.03.2008, the revision petitioner had obtained a decree for partition against the second respondent herein and the other co-owners in O.S.No.500 of 2007. The learned counsel had also filed an Additional Typed set of papers in which he has enclosed a judgment and decree passed in O.S.No.500 of 2007.

7. A perusal of the judgment would indicate that the second respondent therein and the other defendants had remained ex-parte and an ex-parte decree had been passed. No document whatsoever has been produced on the side of the revision petitioner in that suit to show his right to claim

partition. Though in the judgment there is a reference to documents having been perused, the certified copy of the judgment does not contain the list of that documents that had been filed in the suit. Neither has the judgment referred to any oral evidence or the fact that the revision petitioner had got into the box. It is based upon this judgment and decree that the revision petitioner has now come forward with the implead petition. The learned counsel would also rely on the judgment ***Sumtibai and Others Vs. Paras Finance Co.*** reported in **(2007) 10 SCC 82**. He would also draw the attention of this Court to paragraph No.14 of the aforesaid judgment where the Honourable Supreme Court had held that in a suit for specific performance, there is no absolute proposition that the third party can never be impleaded. The Honourable Supreme Court had also proceeded that the third party can be impleaded on showing a fair semblance of title or interest. The learned counsel would therefore pray that the revision petition should be allowed.

8. The learned counsel appearing for first respondent

<http://www.judis.nic.in> would contend that the partition suit itself is a collusive suit

since the property belongs to the second respondent and the decree for partition is based upon a one line non-speaking judgment. He also relied upon the judgment ***D.Rajini Sukumar Vs. Pushpa Kumari*** reported in **2018 (4) CTC 366** where this Court has held that when an ex-parte decree and judgment does not reflect the reasoning, based upon which the Court comes to the conclusion such a judgment requires to be ignored.

9. Heard the counsels on both sides and perused the documents.

10. It is seen from the documents that the first respondent had filed a suit for specific performance on the basis of the agreement of sale which has been entered between himself and the second respondent herein and that the property in question belongs to the second respondent. The suit for partition has been filed subsequent to the issue of the legal notice by the first respondent herein and the defendants had chosen to remain ex-parte including the

second respondent herein. Therefore, the decree obtained by the revision petitioner also gives rise to misgivings in the mind of this Court.

11. Be that as it may, the suit is one for specific performance of an agreement of sale which has been entered into between the first respondent and the second respondent and it is this agreement that the first respondent is seeking to enforce. Therefore, the revision petitioner who is third party to the agreement cannot seek to have himself impleaded, particularly, he has no semblance of a right to the property. Even in the judgment of the Honourable Supreme Court quoted in the side of the revision petitioner, the Honourable Supreme Court had held that the third party can be impleaded in a suit for specific performance provided he is able to "show a fair semblance of title or interest". In the instant case, this Court is unable to find such semblance of a right. I find no infirmity in the order of the learned Subordinate Judge, Fast Track Court No.IV, Chennai.

P.T.ASHA, J.,
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12. In the result, this Civil Revision Petition is dismissed and the order passed by the learned Additional District and Sessions Judge, FTC-IV, Chennai in I.A.No.221 of 2011 in O.S.No.9254 of 2010 dated 28.03.2012 is confirmed. Considering the fact that the suit is of the year 2007, the learned Additional District & Sessions Judge, FTC-IV, Chennai is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

24.10.2018

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Index: Yes/No

To

The Additional District and Sessions Court
(Fast Track Court No.IV),
Chennai.

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