

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2018

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The Honourable Ms.Justice P.T.ASHA

**C.R.P(PD)No.3747 of 2012
and
M.P.No.1 of 2012**

P.V.Balasubramaniam

...Petitioner

Versus

1.A.Thirugnanam
2.A.Jayakumar
3.K.R.Shanmugam
4.Sampooranam
5.R.Balamani
6.K.Gnanambal

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 10.12.2011 made in I.A.No.499 of 2011 in O.S.No.124 of 2006 on the file of the II Additional Sub Court, Salem.

For Petitioner : Ms.Zeenath Begum
for Mr.V.Rajesh

For Respondents - 1 to 3
& 6 : No Appearance

Respondents - 4 & 5 : Not ready in notice

ORDER

This Civil Revision Petition is filed challenging the order dismissing the Application filed by the revision petitioner herein who is the plaintiff in suit O.S.No.124 of 2006 on the file of the Additional Subordinate Court, Salem seeking to implead the respondents 4 to 6 herein as defendants 4 to 6 in the O.S.No.124 of 2006.

2. The suit O.S.No.124 of 2006 has been filed by the revision petitioner for specific performance and permanent injunction restraining the defendants therein from alienating or encumbering the suit property and from interfering with the petitioner's peaceful possession and enjoyment of the suit property. The suit is based on the agreement of sale dated 10.02.2003 entered into between the revision petitioner and the respondents with their then family Manager Kartha and father S.P.Arthanari Mudaliar.

3. It is seen that on 02.11.2010, the third defendant/third respondent herein had filed a written statement in which he had clearly stated that the property

belonged to S.P.Arthanari Mudaliar and his sisters who had filed a suit for partition in O.S.No.82 of 2010 on the file of the Fast Track Court No.II, Salem and that the property does not belong exclusively to the legal representatives of S.P.Arthanari Mudaliar. Thereafter, the revision petitioner had come forward with an Application seeking to implead the respondents 4 to 6 as defendants 4 to 6 in the O.S.No.124 of 2006. This Application was dismissed by the learned II Additional Subordinate Judge, Salem stating that the suit is for specific performance based on the agreement dated 10.02.2003 executed by respondents and therefore, in this suit, the proposed parties cannot be called to answer the issues framed in the suit.

4. Ms.Zeenath Begum, learned counsel appearing for the petitioner would argue that the proposed parties are necessary to the suit since their interest also overlapped. Further, I am unable to accept this argument since the suit filed by the revision petitioner is one for specific performance and that too in respect of agreement of sale entered into between respondents 1 & 2 where proposed parties are not

P.T.ASHA, J.,

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parties. If the revision petitioner is aggrieved by the suit for partition which has been filed, he ought to have moved an Application if so advised and if law permits in that suit. The attempt to implead them in this suit is definitely not maintainable. Therefore, I find no infirmity in the order of the learned Subordinate Judge, Salem.

5. In the result, this Civil Revision Petition is dismissed and the order passed by the learned Subordinate Judge, Salem in I.A.No.499 of 2011 in O.S.No.124 of 2006 dated 10.12.2011 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

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Index: Yes/No

To
The II Additional Sub Court,
Salem.

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