

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.3882 of 2013

&

M.P.No.1 of 2013

Abdul Hameed

.. Petitioner

..Vs..

1.Andal Ammal

2.R.K.Govindasamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 23.02.2012 made in I.A.No.525 of 2011 in O.S.No.10 of 2009 on the file of the Subordinate Judge, Chidambaram.

For Petitioner :Mr.Srinath Sridevan

For Respondent 2 :Mr.Sankaran

For Respondent 1 :No appearance

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ORDER

The instant revision has been filed challenging the order dated 23.02.2012 passed in I.A.No.525 of 2011 in O.S.No.10 of 2009 on the file of the learned Subordinate Judge, Chidambaram.

2. The petitioner is the plaintiff in the suit O.S.No.10 of 2009 pending on the file of the Sub Court, Chidambaram. He has filed the suit for specific performance of an agreement of sale against the second respondent who is the defendant in the suit. During the pendency of the suit, the first respondent being a third party filed I.A.No.525 of 2011 in O.S.No.10 of 2009 seeking to implead herself as a party to the suit O.S.No.10 of 2009 as she claims that she has got a share in the suit schedule property and further, she has stated that the second respondent who is the defendant in the suit is her brother. A counter was also filed by the petitioner who is the plaintiff in the suit in I.A.No.525 of 2011 in O.S.No.10 of 2009. By order dated 23.02.2012, the Trial Court allowed the impleading application namely I.A.No.525 of 2011 filed by the first respondent who is a third party to the proceeding.

3. Aggrieved by the order dated 23.02.2012 in I.A.No.525 of 2011 in O.S.No.10 of 2009, the petitioner who is the plaintiff in the suit has filed this revision.

4. Heard, Mr.Srinath Sridevan, learned counsel for the petitioner and Mr.G.Sankaran, learned counsel appearing for the second respondent. There is no representation on the side of the first respondent.

5. According to the learned counsel for the petitioner, the first respondent being a third party is not a necessary party to the suit and the Trial Court ought not to have allowed I.A.No.525 of 2011. According to the learned counsel for the petitioner, the suit has been filed by the petitioner for specific performance of an agreement of sale entered into with the second respondent who is the defendant in the suit. According to him, the petitioner being a third party who claims right in the suit schedule property is not a necessary party. Further he has submitted that the first respondent who is the third party has filed another suit O.S.No.75 of 2009 against the second respondent who is her brother, for

partition in which the petitioner has been unnecessarily impleaded by the first respondent by virtue of the impugned order dated 23.02.2012. The learned counsel for the petitioner drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of Kasturi vs. Iyyamperumal and others reported in (2005) 2 BLJR 1114 (SC) and referred to paragraph 6 of the said Judgement which reads as follows:

“ 6. In our view, a bare reading of this provision namely, second part of Order I, Rule 10, sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of

the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.”

According to the learned counsel for the petitioner, only if the petitioner who seeks impleadment in a suit satisfies two tests namely (a) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (b) no effective decree can be passed in the absence of such party.

6. In the instant case, the proposed party namely, the first respondent claims that the second respondent who is the defendant in the suit is her brother and she has a share in the suit schedule property in respect of which an agreement for sale was entered into with the petitioner by the second respondent. Admittedly, a partition suit has also been filed by the first respondent against the second respondent in O.S.No.75 of 2009. Even though according to the petitioner, it is a collusive suit, whether the partition suit is a collusive suit or not can be tested only after trial in the said suit. As a party who claims right over the suit schedule property in respect of which an agreement for sale has been entered into between the petitioner and the second respondent,

the said party is definitely a necessary party for the effective adjudication of the dispute. The first respondent who has been impleaded in I.A.No.525 of 2011 has certainly satisfied the two tests laid down by the Hon'ble Supreme Court as stated supra.

7. Further, the learned counsel for the second respondent also submits that pursuant to the said order passed in I.A.No.525 of 2011, the amendment has already been carried out and the suit is ripe of trial. In such circumstances, this Court does not find any merit in the instant revision. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2018

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Index:Yes/No

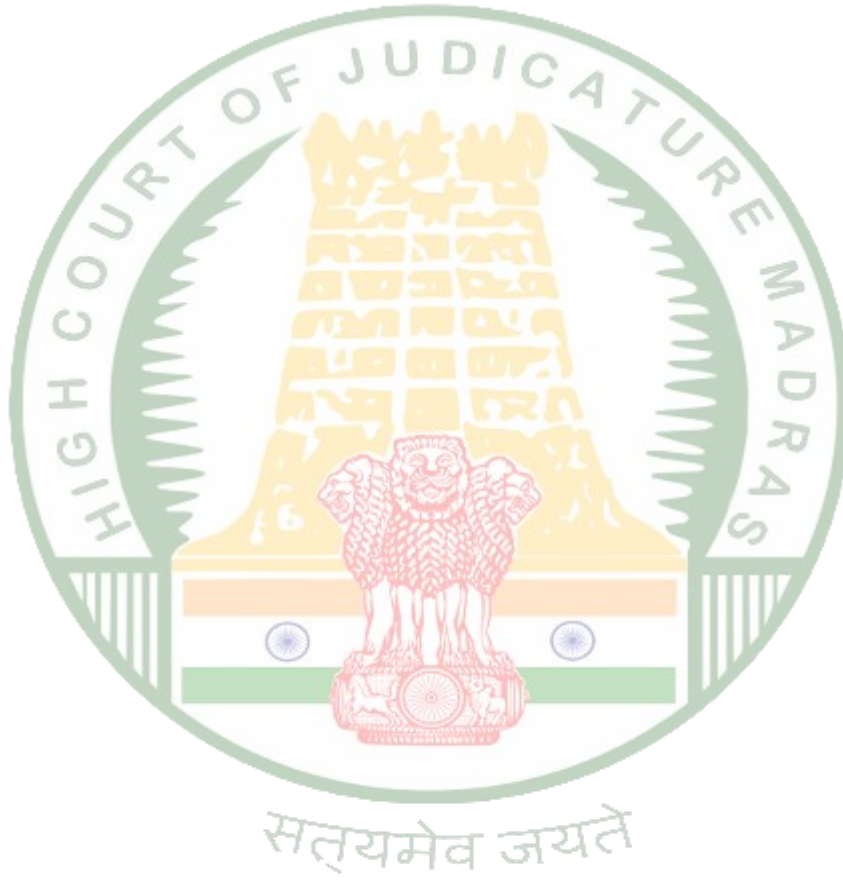
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Speaking/Non-speaking orders

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To

The Subordinate Judge,
Chidambaram.



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ABDUL QUDDHOSE, J.

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