

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2018

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.R.P No.523 of 2010
and M.P.No.1 of 2010

P.Kalaiselvan Petitioner/Plaintiff

- Vs -

1.Devaki
2.Om prakash
3.Vishnu priya
4.Gayathiri Respondents/Defendants

Prayer : This Petition is filed under Section 227 of Civil Procedure Code against the fair and final orders dated 17.12.2009 passed in I.A.No. 138 of 2009 in O.S.No. 704 of 2003 on the file of the II Additional Subordinate Court, Salem.

For Petitioners : Mr.R.Nalliyappan

For Respondents 1 to 3 : Mr.S.Kalyanaraman

For Respondent 4 : Not ready in notice

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned second Additional Subordinate Judge, Salem in I.A.No.138 of 2009 in O.S.No.704 of 2003, whereby, the application filed by the revision petitioner to implead the proposed party as the sixth defendant in the suit, was dismissed.

2. The revision petitioner had filed the suit O.S.No.704 of 2003 for specifically enforcing the agreement of sale dated 20.12.1999 entered into by the revision petitioner with the deceased first defendant as power agent of the original owner Angulakshmi [who is the third party sought to be impleaded in this suit]

3. It was the case of the revision petitioner that despite several requests to the first defendant to execute the sale deed and receive the balance sale consideration, the deceased first defendant had shown abject reluctance, thereby constraining the revision petitioner to file the suit.

4. The Court guardian on behalf of the minor defendants 4 and 5, who are respondents 3 and 4 herein, contended that there was no agreement between the first defendant and the revision petitioner. It was also stated that on the death of first defendant, the power executed by the original owner Angulakshmi also expired and therefore, the legal heirs cannot be compelled to execute the sale deed. It was categorically stated that Angulakshmi, who was the original owner, has to be impleaded as the necessary party.

5. The written statement has been filed after the defendants were impleaded as legal heirs of the deceased first defendant. Thereafter, on 23.11.2009, the revision petitioner has filed I.A.No.138 of 2009 for impleading the proposed party Angulakshmi as the sixth defendant in the suit.

6. In the affidavit filed in support of the petition, the revision petitioner would submit that originally, the deceased first defendant had purchased the property from Angulakshmi, but, instead of getting the sale deed, he has got the Power of Attorney. When the suit was pending, the first defendant had died and his legal heirs were brought on record. It is further stated that when PW.1 was examined, he was advised to implead the real owner as a party, since the legal heirs did not derive any title to the suit property. The third respondent had filed a counter which was adopted by the respondents 2 and 4, in which, they had stated that there was no connection between Angulakshmi and the revision petitioner and that the application to implead her is highly time barred and the entire cause of action of the suit would undergo a change.

7. The Court guardian on behalf of the fifth respondent had also filed a counter stating that the petition was highly belated and it was filed only with an intent to drag on the proceedings.

8. The learned II Additional Judge, Salem, after hearing the parties to the suit, dismissed the application on the ground that the entire claim is based on an un-registered Sale Agreement dated 20.12.1999 and in the absence of a valid document, the right of the owner is not affected. Since the document is an un-registered one, the right of the proposed party is not likely to be affected and therefore, she is not a

necessary party to the suit. Aggrieved by the said order, the revision petition has been filed by the plaintiff.

9. Heard Mr.Nallaiyappan, the learned counsel for the petitioner and Mr.Kalyanaraman, the learned counsel for the respondents. 1 to 3.

10. A reading of the plaint would indicate that even on the date of filing of the suit, the revision petitioner was very much aware that the proposed party is the owner of the property and the deceased first defendant is only a power agent. The relevant para of the plaint is extracted hereunder.

"III. The properties more fully described hereunder belongs to one Angulakshmi, Wife of Sevi Gounder by virtue of the sale deed dated 6-3-1981 executed by C.Ramachandran and another sale deed executed by N.Gopalasamy and the same date and registered as Doc. No:1000/1981.The said Angulakshmi executed a registered power of Attorney in favour of the Defendant on 12-3-1998 regarding the suit property. It was registered as Document No: 78/1998".

11. Therefore, the revision petitioner, knowing fully well that the first defendant was only a power agent, has chosen to file the suit against the power agent and not against the real owner. The reason for this omission is seen from the reading of the affidavit filed in support of the impugned order. In the affidavit, the revision petitioner has stated in paragraph 2, as follows.

"2. I have filed a suit for specific performance against the 1st respondent on the basis of the agreement entered into between me and the 1st respondent On 20.12.1999. The 1st respondent entered into an agreement as a Power of Attorney of one Angulakshmi wife of Sevi gounder. The property belongs to Angulakshmi. Originally the 1st respondent purchased the property from Angulakshmi and instead of getting sale deed he got power of Attorney.But subsequently when the suit is pending the 1st respondent is died by leaving the 2 to 5 respondents as his legal heirs."

12. Therefore, the revision petitioner has consciously filed the suit only against the defendant because he was aware that the property had been purchased by the deceased first

defendant and without having the sale deed executed, only power of attorney was taken by the first defendant.

13. That apart, it is seen that after the first defendant had died, the revision petitioner, instead of impleading the real owner, has only impleaded his legal representatives and even they have filed a written statement after the impleadment, stating that since the first defendant was only a power agent, his power would come to an end on his demise. Even after such a defence being raised, the revision petitioner has not taken any steps to implead the original owner. It is only after his evidence as PW.1 that he has taken out the impugned application which is nothing but an attempt to fill up the lacunae. The petitioner who has slept for over 6 years cannot be granted the indulgence of this court. The learned Second Additional Sub Judge, Salem has rightly dismissed the application and I find no infirmity in the impugned order passed by the Court below.

14. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srn

To

The II Additional Subordinate Judge,
Salem.

+lcc to M/S.R.Nalliyappan, Advocate Sr.57286
+lcc to M/S.S.Kalyanaraman, Advocate Sr.57406

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and M.P.No.1 of 2010

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