

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.566 of 2012
& M.P.No.1 of 2012

- 1.D.Arumugam (Died)
- 2.A.Kuppammal
- 3.Jayalakshmi
- 4.A.Sakunthala
- 5.A.Jeevanantham
- 6.A.Manjula

.. Petitioners

(Petitioners 2 to 6 brought on record as Lrs of the deceased first petitioner viz., D.Arumugam vide Court order dated 06.03.2018 made in C.M.P.Nos.4516 to 4518/2017 in C.R.P.No.566/2012)

Vs.

- 1.P.Thangaraj
- 2.R.Murali
- 3.Pushpammal
- 4.Ponnu Alias Bhavani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.02.2011 made in I.A.No.973 of 2010 in O.S.No.198 of 2007 on the file of the Additional District Munsif Court, Kancheepuram.

For Petitioner : Mr.R.S.Mohan

For R1, R3 & R4 : Mr.Dhalapathy Vignesh Kumar
for Mr.M.Sriram

For R2 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 22.02.2011 made in I.A.No.973 of 2010 in O.S.No.198 of 2007 on the file of the Additional District Munsif Court, Kancheepuram.

2.The first petitioner is the plaintiff, first respondent is the defendant and respondents 2 to 4 are the proposed parties in O.S.No.198 of 2007 on the file of the Additional District Munsif Court, Kancheepuram. The first petitioner filed the said suit against the first respondent for specific performance of agreement of sale dated 12.10.1994. The first respondent filed written statement on 29.10.2007 and is contesting the suit.

3.The first petitioner filed I.A.No.973 of 2010 under Order I

Rule 10 of C.P.C to implead the respondents 2 to 4 as defendants 2 to 4 in the suit. According to the first petitioner, the first respondent represented that he is the legal heir of one Parthasarathy, who purchased the suit property from one K.Ramamoorthy Naidu by way of registered sale deed dated 10.01.1977. From the date of purchase, his father was in possession and enjoyment of the suit property till October 1994 without any interruption. On said representation, the first respondent entered into an agreement of sale with first petitioner and received sale consideration and handed over the possession of the property and original sale deeds. The first petitioner having come to know that first respondent is making arrangements to sell the suit property to third parties filed O.S.No.200 of 2007 for permanent injunction. The said suit was decreed as prayed for. In spite of such decree of permanent injunction, the first respondent sold the property to second respondent on 02.01.2007. On obtaining Encumbrance Certificate, the first petitioner came to know that first respondent, his mother and sister, respondents 3 and 4 jointly sold the property to the second respondent by deed of sale dated 02.01.2007. In the circumstances, the respondents 2 to 4 are necessary parties to the suit and present application is filed for impleading them. The first

respondent did not file any counter affidavit.

4.The learned Judge considering the averments in the affidavit, dismissed the application, holding that the first petitioner has prayed for impleading the parties to the sale deed dated 02.01.2007 as defendants 2 to 4, but has not filed any sale deed and averments in the affidavit are vague and also the first petitioner is claiming two reliefs in one application for which he is not entitled to.

5.Against the said order of dismissal dated 22.02.2011 made in I.A.No.973 of 2010 in O.S.No.198 of 2007, the petitioners have come out with the present Civil Revision Petition.

6.The learned counsel for the petitioners contended that the learned Judge is not correct in holding that first petitioner is claiming two reliefs in single application. The first petitioner has filed common affidavit for two different petitions along with said petition. The learned Judge failed to consider that subsequent purchaser pending suit is necessary party to decide the issue in the suit.

7.Per contra, the learned counsel for the respondents 1, 3 and

4 contended that the first respondent has sold the property even before filing of the suit. The agreement of sale is dated 12.10.1994. The first petitioner has filed suit after 13 years of agreement of sale. It is not correct to state that first respondent sold the property after decree of permanent injunction. The present suit is for specific performance of agreement of sale and therefore, the second respondent, the purchaser and respondents 3 and 4 are not necessary parties to the suit and prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel for the petitioners as well as the respondents 1,3 and 4 and perused the materials available on record. Pending Civil Revision Petition, the first petitioner died. The legal heirs of the deceased first petitioner were impleaded as the petitioners 2 to 6 vide order of this Court dated 06.03.2018 made in C.M.P.Nos.4516 to 4518 of 2017. Though notice has been served on the second respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

9. The first petitioner has filed suit for specific performance of

agreement of sale dated 12.10.1994 executed by the first respondent in favour of the first petitioner. The suit was filed in the month of February 2007. Pending suit, the first petitioner has sought for impleading respondents 2 to 4. According to the first petitioner, the respondents 1, 3 and 4 sold the property to the second respondent after the first petitioner obtained decree of permanent injunction restraining the first petitioner from alienating the property to third party. These contentions are contrary to the facts.

10. The respondents 1, 3 and 4 have sold the property to the second respondent on 02.01.2007 even before the first petitioner filed present suit for specific performance of agreement of sale as well as O.S.No.200 of 2007 for permanent injunction. The present suit is for specific performance of agreement of sale. The issues to be decided in the present suit are whether agreement of sale is valid and the plaintiff was always ready and willing to perform his part of the contract, or whether defendant failed to execute the sale deed or refused to perform his part of the contract. In the present case, the first respondent alone has entered into agreement of sale with first petitioner. In such a case, whether the said agreement of

sale is valid or not is the issue to be decided in the suit. To decide such an issue, the respondents 2 to 4 are not necessary parties as second respondent is the purchaser and respondents 1, 3 and 4 have sold the property even before filing of the suit by the first petitioner. For the above reason, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 22.02.2011 made in I.A.No.973 of 2010 in O.S.No.198 of 2007.

11.In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

20.03.2018

Index :: Yes
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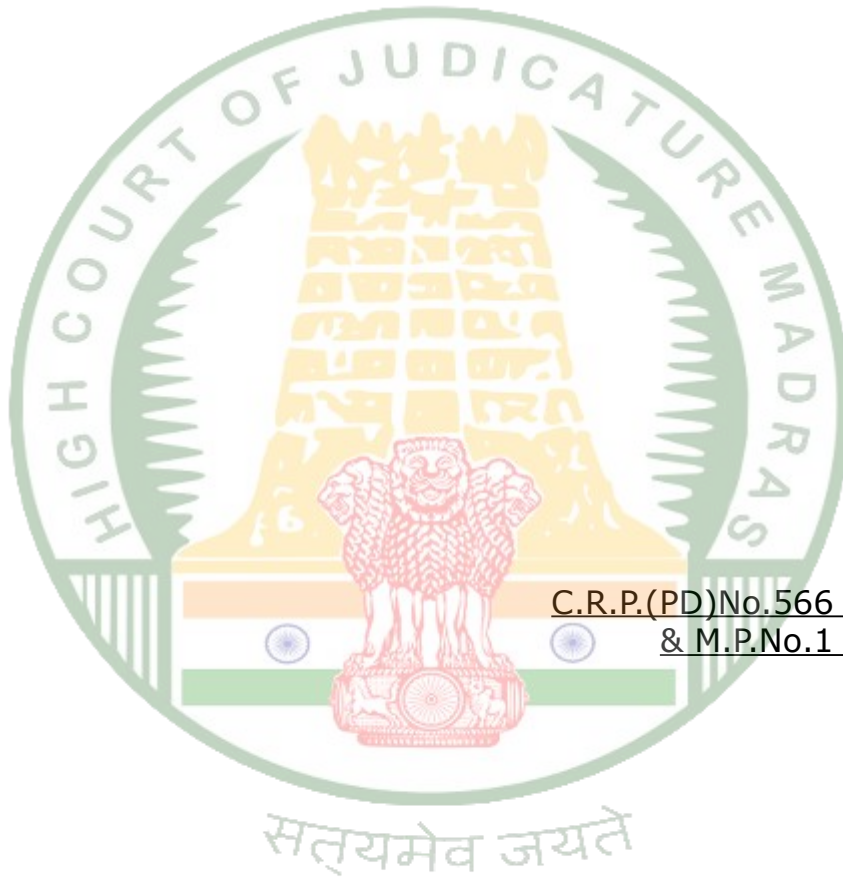
To

The Additional District Munsif,
Kancheepuram.

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V.M.VELUMANI,J.

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