



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.01.2018

CORAM :
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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C.R.P. (PD) (MD) No.17 of 2018
in
C.M.P. (MD) No.256 of 2018

Subbulakshmi : Petitioner / Petitioner / 3rd Party
vs.

1.Rajkumar : 1st Respondent / 1st Respondent / Plaintiff
2.Kanagammal
3.Manivel : Respondent 2&3/ Respondent 2&3
/ Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree passed dated 16.11.2017 made in I.A.No.196 of 2017 in O.S.No.15 of 2013 on the file of the Sub Court, Veda sandur, Dindigul District.

For Petitioner : Mr.G.Gomathi Sankar
For Caveator : Mr.P.Dhanasekaran

ORDER

This civil revision petition is filed by a third party to the suit, who had filed an Interlocutory Application in I.A.No.196 of 2017 in O.S.No.15 of 2013 on the file of the Sub Court, Veda sandur, Dindigul District, to implead himself as a party.

2.The first respondent in this petition is the plaintiff in O.S.No.15 of 2013 and the suit is for specific performance of an agreement of sale alleged to have been entered into between the first respondent/plaintiff and the second & third respondents. The fact that the property stands in the name of the petitioner's mother, namely, the second respondent is not in dispute. Stating that the second respondent through her power of attorney agent, the third respondent has executed a sale agreement in favour of the first respondent, the first respondent has filed the suit in O.S.No.13 of 2015 for specific performance of the agreement of sale. The petitioner has filed a suit in O.S.No.231 of 2017 on the file of the Sub Court, Veda sandur, Dindigul for partition of her share in the suit properties, which are also the subject matter of the suit filed by the first respondent for specific performance.

3.In the suit filed by the petitioner, it is stated that the properties were purchased by her father in the name of the first defendant in the suit namely the second respondent herein. In the suit filed by the petitioner, the petitioner has prayed for



declaring that the agreement alleged to have been executed by the first defendant in O.S.No.15 of 2013 in favour of the plaintiff on 06.01.2010 as well as the power of attorney alleged to have been executed by the second respondent herein in favour of the third respondent herein, are null and void.

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4.The petitioner has already availed her remedy by filing an independent suit for partition and other consequential reliefs so as to establish her right over the suit properties. The present suit is only for specific performance and the issue arise for consideration is regarding the genuineness of the sale agreement and whether it is enforceable. Apart from this, the plaintiff / first respondent has to prove his readiness and willingness to succeed in the specific performance suit as against the respondents 2 and 3 herein. The petitioner wants to establish her right in the suit properties, which are also the subject matter of sale agreement in which the petitioner is not a party. In such circumstances, the petition filed by the petitioner to implead herself as a party in the suit is not permissible. The scope of suit filed by the first respondent against respondents 2 and 3 cannot be enlarged at the instance of a stranger to the suit agreement and hence, he is not a necessary or proper party and his right in prosecuting his suit is not curtailed and on establishing his right in his suit, the decree for specific performance cannot be executed against him.

5.A third party to an agreement, who is claiming right and title over the property cannot be impleaded to enlarge the scope of the suit. Therefore, the application filed by the petitioner has been rightly dismissed. This Court finds no merit in the present revision and as a result, this civil revision petition is dismissed and the order dated 16.11.2017 in I.A.No.196 of 2017 in O.S.No.15 of 2013 passed by the Sub Court, Vendasandur, Dindigul District is confirmed. However, it is made clear that the petitioner's right to pursue his suit is not curtailed by this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

The Sub Court, Vendasandur, Dindigul District.

+1cc to Mr.P.DHANASEKARAN,Advocate,SR.41922

+1cc to Mr.G.GOMATHI SANKAR,Advocate,SR.41918

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