

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.PD.No.881 of 2011

and M.P.No.1 of 2011

A.Palanisamy

... Appellant

Vs.

1. P.Marappa Gounder

(R1 died. R2 to R7 are the legal representatives of the deceased R1 vide order dated 26.10.2018 made in CRP.No.881 of 2011 and M.P.No.1 of 2011 as per the memo dated 26.10.2018 – recorded)

2. M.Karuppathal

3. Sami Kanndu

4. Gunesekaran

5. Saraswathi

6. Dhayalakshmi

7. Minor V. Harish

8. M.Vijayaraj

9. M.Dakshnamurthy

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decretal order dated 04.02.2011, made in I.A.No.1450 of 2010 in O.S.No.16 of 2003, on the file of the Additional District Judge and Fast Track Court – IV, Coimbatore @ Tiruppur.

For Petitioner : Mr.N.Anand Venkatesh
For Respondents : R1 died
R3 to R7 – no appearance
Mr.K.Goviganesan for R8 and R9.

ORDER

This civil revision petition has been filed against the order of the trial court dismissing the application to implead the subsequent purchaser as defendants 9 and 10 in the suit.

2. Brief facts leading to file this revision is as follows :

The petitioner herein is the plaintiff in the suit. He has filed the suit for the relief of specific performance of contract. While deposing the evidence of DW1, DW1 had stated that the 1st defendant has sold an extent of 1 acre in the common suit property to the 1st proposed party, before filing the suit. The said sale was effected while the Ex.A1 is in force and enforceable against the defendants. The defendant had not brought the sale to the notice of the plaintiff and to the notice of this Hon'ble Court at the time of filing written statement. Likewise, during the pendency, the defendants had effected another sale with

respect to the remaining suit properties to the 2nd proposed party. For the proper and complete adjudication and to avoid multiplicity of the proceedings, it is necessary to implead the proposed parties as 9th and 10th defendants in the suit.

3. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents and also perused the materials available on record.

4. It is the contention of the revision petitioner that the trial Court held the proposed parties have purchased the property during pending suit and also purchased during the existence of the prior contract in favour of the plaintiff. Therefore, the subsequent purchaser not necessarily to be brought on record for effective adjudication. The above application was opposed by the respondents on the ground that they have purchased the property on 21.12.2000 and 16.11.2005 respectively. After hearing the parties, the trial court dismissed the application.

5. Admittedly, the suit has been filed for specific performance on the basis of the contract which was said to have been executed in the year 1998 in favour of the plaintiff. It is not in dispute that the proposed parties have purchased the properties on 21.12.2000 and 16.11.2005 in much after the alleged agreement. Therefore, this Court is of the view that those parties also necessarily to be brought on record in order to give effective adjudication. Since the bona fide of the subsequent purchaser is to be proved, they should be given an opportunity to prove their bona fideness also under Section 19 of the Specific Relief Act which gives right to the subsequent purchaser to prove the bona fide transactions. If they are able to show before the Court that they are bona fide purchaser for valuable consideration, the contract cannot be enforced as against them. Therefore, this Court is of the view that the subsequent purchaser are necessary parties to be brought on record.

6. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

7. The order of the trial court is set aside and impleading petition is allowed. The plaintiff is directed to make necessary amendment within a period of fourteen (14) days from the date of receipt of a copy of this order. Thereafter, the trial Court is directed to give opportunity to the newly impleaded parties to file written statement and frame necessary issues with regard and proceed to dispose of the suit within a period of six months.

25.03.2019

msv
Index:Yes/No
Internet:Yes/No
Speaking Order: Non-speaking order

To

The learned Additional District Judge
and Fast Track Court – IV,
Coimbatore @ Tiruppur.

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N. SATHISH KUMAR, J.

msv



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