

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM :

THE HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.NO.902 OF 2013
AND M.P.NO.1 OF 2013

R.Mani

... Petitioner

Vs.

1.P.Kalaiselvi
2.Sivalingam

... Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the Subordinate Judge, Kallakurichi dated 04.10.2012 in I.A.No.504 of 2011 in O.S.No.128 of 2005.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.A.K.Kumarasamy, Senior Counsel
for Mr.A.Kaithamalai Kumaran (R1)
R2 - not ready in notice

ORDER

Challenging the fair and final order passed in I.A.No.504 of 2011 in O.S.No.128 of 2005 on the file of the Subordinate Court, Kallakurichi, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.128 of 2005 for specific performance on 14.12.2005.

3.The 1st respondent/defendant sold the property to the proposed 2nd defendant on 16.11.2005 and registered a Sale Deed in his favour. Thereafter, the plaintiff took out an application in I.A.No.504 of 2011 on 02.08.2011 to implead the subsequent purchaser as the 2nd defendant in the suit. In the affidavit filed in support of the petition, the plaintiff has stated that since the 1st defendant, against whom the suit was filed for specific performance, had sold the property to the proposed party even prior to the institution of the suit, therefore, he is a proper and necessary party for proper adjudication of the

matter. The application filed by the plaintiff was opposed by the respondents. The trial Court, after taking into consideration the case of both parties, dismissed the application finding that the application filed by the plaintiff to implead the proposed party is barred by limitation.

4.Mr.P.Valliappan, learned counsel appearing for the petitioner submitted that since the 1st defendant had sold the property to the proposed party on 16.11.2005 itself, the subsequent purchaser to the suit agreement is a proper and necessary party.

4.1.In support of his contentions, the learned counsel relied upon the following judgments:

(i)2013 (2) CTC 104 [Thomson Press (India) Ltd., Vs. Nanak Builders & Investors P. Ltd.,] wherein the Hon'ble Supreme Court held as follows:

"...

13. The question, therefore, that falls for consideration is as to whether if the appellant who is the transferee pendente lite having notice and knowledge about the pendency of the suit for specific performance and order of injunction can be impleaded as party under Order 1 Rule 10 on the basis of sale deeds executed in their favour by the defendants Sawhneys'.

...

28. From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is a either necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the suit.

...

42. Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. The appeal is, accordingly, allowed and the impugned orders passed by the High Court are set aside."

(ii)AIR 2005 Supreme Court 2813 (1) [Kasturi Vs. Iyyamperumal and others] wherein the Apex Court held as follows:

"...

12.From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the

proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

13. Keeping the principles as stated above in mind, let us now, on the admitted facts of this case, first consider whether the respondent Nos.1 and 4 to 11 are necessary parties or not. In our opinion, the respondent Nos.1 and 4 to 11 are not necessary parties as effective decree could be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the contract entered into between the appellant and the respondent Nos.2 and 3. In the case of Anil Kumar Singh Vs. Shivnath Mishra Alias Gadasa Guru, reported in 1995(3) SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at paragraph 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

"Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party." [Emphasis supplied]"

...

18. The learned counsel appearing for the respondent Nos.1 and 4 to 11, however, contended that since the respondent Nos. 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including respondent Nos.1 and 4 to 11, therefore, the same can be settled in the present suit itself. Accordingly, it was submitted that the presence of respondent Nos.1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as

indicated herein earlier, including the scope of the suit, we are of the view that it lacks merit. Merely, in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because the respondent Nos.1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against the respondent No.3 to the contract. In our view, the third party to the agreement for sale without challenging the title of the respondent No.3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.

19. It was also argued on behalf of respondent Nos. 1 and 4 to 11 that to avoid multiplicity of suits it would be appropriate to join the respondent Nos. 1 and 4 to 11 as party-defendants as the question relating to the possession of the suit property would be finally and effectively settled. In view of our discussions made hereinabove, this argument also which weighed with the two courts below has no substance. In view of the discussions made herein earlier, the two tests by which a person who is seeking addition in a pending suit for specific performance of the contract for sale must be satisfied. As stated herein earlier, first there must be a right to the suit property for the same relief against a party relating to the same subject-matter involved in the proceedings for specific performance of contract for sale, and secondly, it would not be possible for the Court to pass effective decree or order in the absence of such a party. If we apply these two tests in the facts and circumstances of the present case, it would be evident that the

respondent Nos.1 and 4 to 11 cannot satisfy the above two tests for determining the question whether a stranger/third party is entitled to be added under Order 1 Rule 10 of the CPC only on the ground that if the decree for specific performance of the contract for sale is passed in absence of respondent Nos. 1 and 4 to 11, their possession over the contracted property can be disturbed or they can be dispossessed from the contracted property in execution of the decree for specific performance of the contract for sale obtained by the appellant against respondent Nos 2 and 3. Such being the position, in our view, it was not open to the High Court or the trial court to join other cause of action in the instant suit for specific performance of the contract for sale, and therefore, the two Courts below acted illegally and without jurisdiction in allowing the application for addition of parties in the pending suit for specific performance of contract for sale filed at the instance of respondent Nos. 1 and 4 to 11. The Learned counsel for the respondent Nos. 1 and 4 to 11 however urged that since the two courts below had exercised their jurisdiction in allowing the application for addition of parties, it was not open to this Court to interfere with such order of the High Court as well as of the trial court. We are unable to accept this contention of the Learned counsel for the respondent Nos. 1 and 4 to 11. As discussed hereinafter, it is open to the Court to interfere with the order if it is held that two courts below had acted without jurisdiction or acted illegally and with material irregularity in the exercise of their jurisdiction in the matter of allowing the application for addition of parties filed under Order 1 Rule 10 of the CPC. The question of jurisdiction of the Court to invoke Order 1 Rule 10 of the CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct interest in the controversy involved in the suit. Can it be said that the Respondent Nos.1 and 4 to 11 had any direct interest in the subject-matter of the instant suit for specific performance of the contract for sale? In our view the Respondent Nos. 1 and 4 to 11 had no direct interest in the suit for specific performance because they are not parties to the contract nor do they claim any interest from the parties to the litigation. One more aspect may be considered in this connection. It is that the jurisdiction of the court to add an applicant shall arise only when the Court finds that such applicant is either a necessary party or a proper party.

...

21. For the reasons aforesaid, in our view, the stranger to the contract, namely, the respondent Nos. 1 and 4 to 11 making claim independent and adverse to the title of respondent Nos. 2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party defendants in the suit for specific performance of contract for sale."

(iii)2011 (1) CTC 331 [1.K.P.Rajendran 2.Andavar @ Loganathan Vs. 1.N.R.Nachimuthu 2.R.Gopalan 3.V.Gopinath 4.R.Uma Maheswari] wherein this Court held that a subsequent purchaser pending suit for specific performance would be necessary and proper party as he has defense that he is a bona fide purchaser without notice of original contract.

5.Countering the submissions made by the learned counsel for the petitioner, Mr.A.K.Kumarasamy, learned senior counsel appearing for the 1st respondent submitted that since the proposed party had purchased the property even prior to the filing of the suit, he is not a proper and necessary party and therefore, the order passed by the trial Court is just and proper.

5.1.In support of his contentions, the learned senior counsel relied upon a judgment reported in (2008) 10 Supreme Court Cases 708 [Ramesh Chandra Pattnaik Vs. Pushpendra Kumari and others] wherein the Apex Court held as follows:

"...

6.Respondent 10 is alleged to have entered into an agreement with Respondent 1 on 15-11-1984 for the sale of the property, which is the subject-matter of the suit filed by the petitioner. In respect of such an agreement, Respondent 10, could have filed a suit for specific performance but, as stated by the learned counsel appearing for the parties, no such suit has been filed. In our opinion, Respondent 10 was not at all a necessary party for determination of the genuineness or otherwise of the agreement of sale which is said to have been entered into between the petitioner and Respondent 1."

6.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the plaintiff has the filed the suit in O.S.No.128 of 2005 for specific performance as against the 1st respondent/defendant on 14.12.2005. Admittedly, the defendant sold the suit property in favour of the 2nd respondent/proposed party under a registered Sale Deed dated 16.11.2005. Thereafter,

the plaintiff filed an application in I.A.No.504 of 2011 under Order 1 Rule 10 of the Code of Civil Procedure to implead the 2nd respondent as the 2nd defendant in the suit on 02.08.2011. From the above, it is clear that the 2nd respondent had purchased the property even prior to the filing of the suit on 14.12.2005.

7. In the judgment reported in 2005 (3) MLJ 124 [Kasturi Vs. Iyyamperumal & Ors.] relied upon by the learned senior counsel for the 1st respondent, the Hon'ble Supreme Court held that the subsequent purchaser is not a necessary party for the reason that the subsequent purchaser, who purchased the property, had not purchased the contracted property from the vendor after the suit contract was entered into. In the case on hand, admittedly, the proposed party had purchased the suit property from the 1st defendant after the agreement of sale entered into between the plaintiff and the 1st defendant on 02.01.2004. Similarly in the judgment reported in (2008) 10 Supreme Court Cases 708 [Ramesh Chandra Pattnaik Vs. Pushpendra Kumari and others], the Hon'ble Supreme Court held that the subsequent purchaser is not a necessary party for the reason that the proposed party had entered into an agreement with the defendant on 15.11.1984 for the sale of the property which is the subject matter of the suit filed by the plaintiff therein. The agreement between the plaintiff and the defendant was entered into on 10.04.1977 and the suit was filed in the year 1979. Therefore, in that case, the proposed party therein cannot be stated as a subsequent purchaser and he was only an agreement holder. Further, the Apex Court held that the proposed party could have filed a suit for specific performance. However, he has not filed the suit independently. In such circumstances, the Apex Court held that the proposed party was not at all a necessary party for the determination of the genuineness or otherwise of the sale agreement, which is said to have been entered into between the petitioner and the 1st respondent. In the case on hand, the proposed party had purchased the suit property from the 1st defendant even prior to the filing of the suit and after the execution of the alleged agreement dated 02.01.2004 between the plaintiff and the defendant. Therefore, the ratio laid down by the Apex Court cannot be applied to the case on hand.

8. On the contrary, in the judgments relied upon by the learned counsel for the petitioner, the Apex Court as well as this Court held that a subsequent purchaser is a proper and necessary party and therefore, he should be impleaded in the suit for proper adjudication.

9. The trial Court, without appreciating the above facts, erroneously dismissed the application finding that the application filed by the plaintiff to implead the proposed party is barred by limitation. But on a perusal of the order, it is

clear that in paragraph - 9, the trial Court itself has observed that the proposed party may be a necessary party. Having given such a finding, the trial Court should have allowed the application. Admittedly, the petitioner has not claimed any relief as against the proposed party. In such a case, the question of limitation does not arise for consideration. The order passed by the trial Court is erroneous and is liable to be set aside. Accordingly, the same is set aside. The application in I.A.No.504 of 2011 in O.S.No.128 of 2005 stands allowed. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
Kallakurichi.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Mr.P.Valliappan, Advocate, S.R.No.93194

+lcc to Mr.A.Kaithamalai Kumaran, Advocate, S.R.No.93295

C.R.P.No.902 of 2013
and M.P.No.1 of 2013

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