



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (PD)No.1490 of 2011and

M.P. (MD)No.1 of 2011

WEB COPY

Athimoolam (Died)

2.Ponnammal

3.A.Suriyakala

4.A.Viswanathan

5.A.Muppidathi

6.Siva Chandran

7.A.Mano

:Petitioners

vs.

1.V.Madasamy

2.V.Sekar

:Respondents

(Petitioners 2 to 7 were brought on record as legal heirs of deceased first petitioner vide order, dated 06.01.2014 in M.P.(MD) Nos.1 to 3 of 2013)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.454 of 2010 in O.S.No.5 of 2010, dated 01.06.2011 on the file of the Subordinate Court, Ambasamudram.

For Petitioners

:Mr.H.Arumugam

For R1

:Mr.S.S.Thesigan

For R2

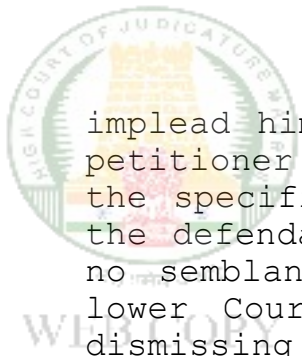
: No Appearance

ORDER

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Ambasamudram, in I.A.No.454 of 2010 in O.S.No.5 of 2010.

2.The revision petitioner is a third party to the suit in O.S.No.5 of 2010. The suit came to be filed by the first respondent herein as against the second respondent for specific performance of an agreement of sale. Even in the plaint, it is admitted that the plaintiff and the defendant purchased the property jointly and the defendant is the owner in respect of half share. Stating that the defendant, who had agreed to execute a sale in favour of the plaintiff in respect his share refused to execute the sale, the suit came to be filed.

3.During the pendency of the suit, the revision petitioner filed an application in I.A.No.454 of 2010 in O.S.No.5 of 2010 to



implead him as party to the suit. In that petition, the revision petitioner contended that the suit itself is a collusive one. It is the specific case of the revision petitioner that the plaintiff or the defendant are not the owner of the property and that they have no semblance of right. After considering the entire facts, the lower Court dismissed the said petition. As against the order dismissing the petition filed by the revision petitioner, the present petition came to be filed.

4.In a suit for specific performance, the issue arose for consideration as per pleadings in the plaint and the written statement are confined to the plaintiff and defendant. The scope of litigation cannot be enlarged by filing a petition to implead a third party to the suit. In this case, the revision petitioner claims independent right and disputing the title or enjoyment by the plaintiff or defendant. In such circumstances, by impleading a third party, the suit filed by the first respondent for specific performance cannot be converted into suit on title. By dismissing the petition, the lower Court has not decided the merits of the claim of revision petitioners.

5.In that view of the matter, this Court is not inclined to entertain this Civil Revision Petition. As such, the Civil Revision Petition is dismissed for want of merits. The order passed in I.A.No.454 of 2010 in O.S.No.5 of 2010, dated 01.06.2011 by the learned Subordinate Judge, Ambasamudram, is confirmed. It is open to the revision petitioner to file any independent suit based on title. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

cmr

To
The Subordinate Judge, Ambasamudram.

Copy To: The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.H.ARUMUGAM, Advocate SR-81322.

C.R.P. (MD) (PD)No.1490 of 2011

09.08.2019

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