



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2019

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD) No.776 of 2011

and

M.P. (MD) No.2 of 2011

Jesu Xavier

:Petitioner/Plaintiff

Vs.

1.R.K.Renganathan

:1st Respondent/Defendant

2.The Branch Manager,
Cyndicate Bank Main Branch,
Dindigul.

:2nd Respondent/Proposed 2nd Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.358 of 2010 in O.S.No.14 of 2010, dated 02.03.2011 on the file of the Additional District and Sessions Court (Fast Track Court), Dindigul.

For Petitioner

:Mrs.S.Vijaya Shanthi

R1

:No Appearance

R2

:Mr.R.Pandivel

ORDER

This Civil Revision Petition is directed against the order passed by the learned Additional District Judge-cum-Sessions Judge (Fast Track Court), Dindigul, in I.A.No.358 of 2010 in O.S.No.14 of 2010, dismissing the petition filed by the revision petitioner to implead the second respondent as second defendant in the suit.

2.The revision petitioner, as plaintiff, filed the suit in O.S.No.14 of 2010 for specific performance of an agreement of sale, stated to have been entered into between the revision petitioner and the first respondent herein, who is the defendant in the suit. Stating that the property, which is the subject matter of sale agreement, had been mortgaged by the first respondent in favour of the second respondent, a petition in I.A.No.358 of 2010 in O.S.No.14 of 2010 was filed by the revision petitioner to implead the second respondent as second defendant in the suit. The said petition was dismissed by the trial Court. Aggrieved by the same, the present petition came to be filed.



3. Having regard to the admitted facts that the suit is only for specific performance of a sale agreement, in which the second respondent is not a party no cause of action arise in the said suit against the second respondent and no relief is claimed against the second respondent. It is also admitted that the sale agreement is subject to the mortgage, that was created by the first respondent in favour of the second respondent. In such circumstances, the second respondent is not a proper and necessary party. As a mortgagee, the Bank's right is not affected by a subsequent transaction of sale agreement. The cause of action to file the suit for specific performance is entirely different and no relief is claimed as against the Bank. Hence, this Court is not inclined to entertain this petition. By impleading a third party, the scope of litigation cannot be enlarged.

4. As a result, this Civil Revision Petition is dismissed. The order passed in I.A.No.358 of 2010 in O.S.No.14 of 2010, dated 02.03.2011 on the file of the Additional District and Sessions Court (Fast Track Court), Dindigul, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)

To

The Additional District and Sessions
Judge (Fast Track Court), Dindigul.

+1 cc Mr.R.PANDIVEL , Advocate, SR.No.75246

C.R.P. (PD) (MD) No.776 of 2011
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CMR
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