



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) .No.167 of 2019 (PD)

and

C.M.P. (MD) .753 of 2019

K.Sonai

... Petitioner/Petitioner/Proposed
2nd Defendant

V.

1.P.Pounraj

... 1st Respondent/1st Respondent
/Plaintiff

2.K.Velmurugan

... 1st Respondent/1st Respondent/
Defendant

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.374/2018 in O.S.No.100 of 2017 dated 13.07.2018 on the file of the learned VI Additional District Judge, Madurai.

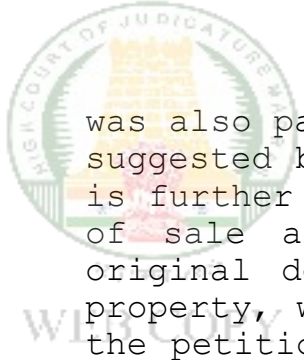
For Petitioner : Mr.M.Thirunavukkarasu
For Respondents : Mr.S.Devaraj, for Caveator

O R D E R

This Civil Revision Petition has been preferred against the decreetal order passed in I.A.No.374 of 2018 in O.S.No.100 of 2017. The said I.A has been filed by the proposed party in the said suit.

2.The petitioner in the said petition has stated that he has entered into a sale agreement with the second respondent/sole defendant regarding the first item of the suit scheduled property in O.S.No.100 of 2017, which is pending before the concerned Court. The said sale agreement was registered on 25.04.2014 before the Sub-Registrar Office, Thallakulam.

3.The contention of the petitioner in the said I.A is that the total sale consideration of the suit property was fixed as Rs.1,88,000,000/- and he has paid a sum of Rs.20,00,000/- as sale advance and hence, as per sale agreement the sale deed has to be executed within three months from the date of registration of the said sale agreement. It is further contended by the petitioner that three months time was given in the sale agreement for registration of the sale, whereas the sole defendant did not come forward to perform his part of contract and hence, the petitioner herein had issued a notice on 05.07.2017 to complete the sale. The defendant also informed the petitioner about the pendency of the suit, which is filed by the respondent herein and attachment order



was also passed in I.A.No.603 of 2017. Therefore, the petitioner was suggested by the sole defendant that he will settle the dispute. It is further contended by the petitioner that at the time of execution of sale agreement, the sole defendant had handed over all the original deeds pertaining to the first item of the suit schedule property, which is the subject matter of the sale agreement. Hence, the petitioner filed a petition to implead himself as a necessary party in the said suit, since the first item has been attached by the Court and further even in the Encumbrance Certificate, the said sale agreement dated 25.04.2014 was also mentioned.

4.The plaintiff in the suit in O.S.No.100 of 2017 has stated that he has filed the suit against the defendant for recovery of the advance amount of Rs.60,00,000/- along with interest and cost of the suit. The said amount was paid by the plaintiff towards advance and part of sale consideration. Hence, the plaintiff has filed the suit for recovery of the said advance amount. In the counter, it is also admitted by the first respondent/plaintiff that he has mentioned about the agreement dated 25.04.2014 and that the defendant has also informed the same to him. Further, it is contended by the plaintiff in the said counter statement that a stranger to the sale agreement is not at all a necessary party or a proposed party. The petitioner, who claims himself as a third party/agreement holder cannot get himself implead as the necessary party and he has to seek remedy by a separate suit.

5.The trial Court observed the contention raised by both parties, has given a finding that in the written statement, which has been filed by the defendant stating that the issues were framed and the case was posted for trial and in such circumstances, some more persons filed I.A.Nos.154/18 and 153/18 claiming right in the said suit. The trial Court has also observed that in the receipt mentioned by the plaintiff dated 02.08.2016 there is no signature found by the defendant and hence, the defendant also sought for sending the said document for analysis. The trial Court has contended that the petitioner herein can be examined as a witness to prove the fact that there was sale agreement between the defendant and the proposed party, who is the petitioner herein and hence, he need not be added as a necessary party in the said suit and the said petition was dismissed by the trial Court. Aggrieved against the order of dismissal, the present Civil Revision Petition has been filed.

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

7.The learned counsel appearing for the petitioner contended that the sale agreement was entered into between himself and the defendant on 25.04.2014 and the suit was filed on 20.06.2017. He further contended that even before 02.08.2016 the plaintiff filed the suit against the defendant for recovery of a sum of Rs.60 lakhs, based on the receipt dated 02.08.2016, which shows that as part of sale agreement. The said amount was also paid to him and he also got



an order of attachment before the trial Court.

8. On perusal of the records, it is observed that the said receipt dated 02.08.2016, does not contain the signature of the defendant. The first respondent/plaintiff has not stated any facts whether any sale agreement was executed and what is the content of the receipt and whether the amount mentioned in the said receipt was paid only as an advance have not been placed before this Court. Whereas, the petitioner herein contended that he entered into an agreement with the defendant on 25.04.2014 and registered the document and he also paid a sum of Rs.20 lakhs.

9. Considering the submissions made on both sides and also considering the facts raised by the petitioner herein and also the plaintiff, who claimed a sum of Rs.60 lakhs, based on the receipt dated 02.08.2016, whether it is an advance amount or any other amount, nothing has been stated, whereas, the first respondent/plaintiff has also got an attachment order that the property belong to the second respondent/defendant. Whereas, the proposed party has entered only an agreement with regard to the first item of the property.

10. In view of the rival claims made by both the petitioner and the plaintiff in the suit, it is seen that both are claiming right over the property based on the receipt to the value of Rs.60 lakhs by the plaintiff and based on the sale agreement that was executed as early as in the year 2014, which found place in the Encumbrance Certificate. The petitioner herein has to be heard that he is a proper and necessary party and both items were attached by the trial Court and against one item of the property, the petitioner herein had paid a sum of Rs.20 lakhs and the sale agreement also registered on 25.04.2014. When the defendant had paid Rs.20 lakhs as advance amount, the plaintiff has claimed only Rs.60 lakhs for which, a receipt was also furnished and the grievance of the petitioner herein has to be considered. Hence, the order of the trial court dated 13.07.2018 in I.A.No.374 of 2018 is set aside and the petitioner has to be added as a necessary party and thereafter, the trial Court hearing the party concerned to arrive at a decision.

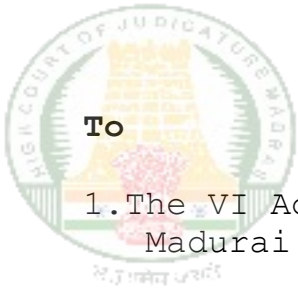
11. In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

1.The VI Additional District Judge,
Madurai.

2.The Record Keeper,VR Section
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-48605[F] dated
21/02/2019)

+1 CC to M/s.S.DEVARAJ, Advocate (SR-49046[F] dated 22/02/2019)

C.R.P. (MD) .No.167 of 2019 (PD)

and

C.M.P. (MD) .753 of 2019

ns

KK/SAR-/29.03.2019/4P-6C