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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2665 of 2015

and

M.P. (MD) No. 1 of 2015

Palpandi

.. Petitioner

Vs.

1.S.Sakthivel

2.S.P.Kaniraj

3.K.Chellathai

4.S.Suganthi Bladina

.. Respondents

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the impugned dismissal order dated 10.10.2015 in I.A.No.226 of 2015 in I.A.No.64 of 2015 in O.S.No.3 of 2015 on the file of the learned District Munsif, Sattur and to set aside the same.

For Petitioner

: Mr.V.A.Dhana Aravindha Balaji
For M/s.Dhana Law Associates

For Respondents 1 and 4

: Mr.R.Sankar Ganesh

For Respondents 2 and 3

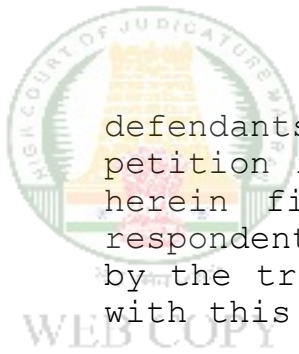
: No Appearance

ORDER

Heard Mr.V.A.Dhana Aravindha Balaji, learned counsel appearing for the petitioner and Mr.R.Sankar Ganesh, learned counsel appearing for the respondents 1 and 4.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.226 of 2015 in I.A.No.64 of 2015 in O.S.No.3 of 2015 dated 10.10.2015 on the file of the learned District Munsif, Sattur and to set aside the same.

3.The petitioner herein is the plaintiff, the first respondent herein is the third defendant and the respondents 2 to 4 are the defendants 2 to 4 in the suit. The petitioner filed a suit in O.S.No.3 of 2015 for a prayer of declaring the sale deed executed by the first defendant in favour of the defendants 3 and 4 in Doc. No.8385/2014 dated 01.12.2014 in the office of the SRO, Sattur as illegal and for perpetual injunction against the



defendants. In that suit, the first respondent herein filed a petition in I.A.No.64 of 2015 to reject the plaint. The petitioner herein filed a petition in I.A.No.226 of 2015 to implead the respondents 2 to 4 in I.A.No.64 of 2015. The petition was dismissed by the trial Court. Against which, the petitioner has come forward with this revision petition.

4.On the side of the petitioner, it is stated that the petitioner/plaintiff has filed a suit for a specific relief. The first respondent herein has filed a petition in I.A.No.64 of 2015 under Order 7 Rule 11 CPC to reject the plaint without impleading the respondents 2 to 4.

5.On the side of the petitioner, it is stated that the petitioner filed a impleading petition stating that there was an agreement for sale between the petitioner and the respondents 1 and 2 and the sale price of Rs.1,15,00,000/- was paid as an advance on 15.12.2015. On the date of agreement itself, possession was handed over to the plaintiff and that the property contain 57 buildings and that the plaintiff is running a fireworks by the name Chellakani and that the property is in his possession and that the defendants 3 and 4 entered into the property on the basis of a sale deed. All the defendants are relatives and the consideration is stated only as Rs.58,00,000/-. Only with an intention to grab possession, the defendants 1, 2 and 4 are purposely let themselves to be set as exparte. All the necessary parties are to be impleaded in the petition to reject the plaint. Atleast the petitioner must be able to get back his advance amount and prayed that the petition to be allowed.

6.On the side of the respondents 1 and 4, it is stated that impleading the respondents is not necessary. I.A.No.64 of 2015 is filed and is still pending and the presence of the new respondents is unwanted in the petition. The plaintiff has not filed any reply statement to answer the rebuttals made by the defendants. The defendants 1 and 2 colluded with the plaintiff tried to deprive the rights of the third defendant from his possession. The defendants 1, 2 and 4 are not necessary parties to decide the issue in the petition under Order 7 Rule 11 of C.P.C.

7.On the side of the respondents, it is stated that the respondents 1, 2 and 4 are not necessary parties. The Court has to take a decision looking into the pleadings of the plaint and not based on the rebuttals made by the defendants 1, 2 and 4 who were already set exparte. In support of his contention, the Judgment passed by the Hon'ble Supreme Court in the case of Kuldeep Singh Pathania v. Bikram Singh Jaryal reported in 2017 (1) T.N.C.J. 846 (SC), which reads as follows:

"In other words, under Order 7, Rule 11, the Court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the



defendant."

8. The learned counsel appearing for the respondents would rely upon the Judgment passed by the Hon'ble Supreme Court in the case of *The Church of Christ Charitable Trust And Educational Charitable Society v. Ponniammam Educational Trust* reported in 2012 (4) CTC 308, which reads as follows:

"Learned Senior Counsel for the respondent vehemently contended that insamuch as in the application for rejection of plaint, the first defendant has not impleaded the second defendant, the said application is liable to be dismissed on the ground of non-joinder of the second defendant, who is a necessary party. On the other hand, learned Senior Counsel for the appellant submitted that second defendant is not a necessary party to the application for rejection of plaint and according to him non-joinder of the second defendant does not affect the merit of the application as the plaintiff alone is a necessary party to the application for rejection of plaint. The stand taken by the appellant, who has filed the application for rejection of the plaint, is sustainable and acceptable.

However in the case on hand, for the disposal of application filed for rejection of the plaint under Order 7, Rule 11, 2nd defendant is not a necessary party, hence, he need not be impleaded. Accordingly, we reject the said objection of the respondent herein.

Apart from the above aspect, in the case on hand, the application for rejection of the plaint of the appellant-1st defendant seeks no relief against the respondent herein-2nd defendant. It is settled legal position that a party against whom no relief is claimed in the application is not a necessary party at all."

9. It is seen that the petitioner filed a suit against the defendants. In that suit, the first respondent filed a petition to reject the plaint and that the revision petitioner wanted to implead the other respondents in the said petition. The trial Court dismissed the petition stating that the defendants 1, 2 and 4 who are set exparte in the lower Court are not necessary parties in the petition.

10. The case of the petitioner is that he entered into a sale agreement with the defendants 1 and 2. The sale price is fixed as Rs.3,01,00,000/-. It is stated that an advance of Rs.1,15,00,000/- was already paid on various dates and the petitioner constructed 57 building and is running fireworks business in the premises. Since



the plaintiff's Manager lost the original sale deed and the payment receipts on 06.08.2014, he lodged a complaint at the station on 08.08.2014.

11.A perusal of the records reveals that the plaintiff is claiming the property on the basis of an oral sale agreement. It is stated that the petitioner has given an advance of Rs.1,15,00,000/- to the defendants 1 and 2. No suit was filed for specific relief or for return of the advance amount. The suit is filed only for declaring the sale deed executed in favour of the defendants 3 and 4 as null and void. It is seen that the third defendant filed a petition for rejection of the suit and the same is pending before the trial Court.

12.In the above circumstances, an opportunity for the petitioner to put forth his case is to be given. If the suit is rejected without hearing the necessary parties, the right of the petitioner will be prejudiced. The sale agreement was said to have been executed by the respondents 1 and 2 and the fourth respondent is the wife of the first respondent. The prayer sought for is against the respondents 3 and 4. Hence, the respondents 1 to 4 are also necessary parties in I.A.No.64 of 2015. No prejudice will be caused to the other side in impleading all the respondents in the suit who are the defendants though the defendants 1, 2 and 4 are set exparte.

13.For the above said reasons, the Civil Revision Petition is **allowed** and the order passed in I.A.No.226 of 2015 in I.A.No.64 of 2015 in O.S.No.3 of 2015 dated 10.10.2015 on the file of the learned District Munsif, Sattur is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Mrn
To

1.The District Munsif, Sattur.

+1CC TO MR.DHANA LAW ASSO., Advocate Sr. No.64526

+1CC TO MR.I.SAM JEGAN, Advocate Sr. No. 64620

C.R.P. (PD) (MD)No.2665 of 2015

30.04.2019

SGS (CO)

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