

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(PD).No.1203 of 2013
and M.P.Nos.1 & 2 of 2013
and M.P.No.1 of 2014

1. P.Indira Devi
2. V.Rajeswari
3. Dr.M.Rajagopal
4. M.Sivasubramanian
5. M.Rajendran
6. Dr.P.Sivakumar
7. P.Maliga
8. P.Malathi
9. R.Usha
10. R.Sudha
11. G.Aruna
12. G.Deepa

... Petitioners/Petitioners/Proposed Defendants 7
to 18

-VS-

1. R.Balakrishnan
2. R.Padmanabhan
3. R.Devarajan
4. D.Selvaraj
5. K.Manonmani
6. M.Padmavathi
7. A.Boovathy
8. Ruckmani
9. M.Venkatesan

... Respondents/Respondents/Plaintiffs

... Respondents /Respondents/Defendants 1 to 6

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 16.11.2012 made in I.A.No.595 of 2011 in O.S.No.170 of 2011 on the file of IV Additional District Judge, Coimbatore.

For Petitioners : M/s.S.Thanka Sivan

For Respondents : M/s.N.Nithianandam for R1 to R3

ORDER

Plaintiffs had filed a suit in O.S.No.170 of 2011 on the file of IV Additional District Court, Coimbatore for specific performance of the suit schedule property, in which the petitioners / proposed defendants 7 to 18 filed an application in I.A.No.595 of 2011 for impleading them in the suit, stating that the suit had been filed by suppressing several material facts. The Trial Court, after considering the very provision of Section 19 of the Specific Relief Act and by citing the judgment of the Hon'ble Supreme Court in the case of Kasturi vs. Iyyamperumal and others, reported in (2005) 6 SCC 733, held that a party claiming adverse to the Vendor need not be a necessary party to the suit for specific performance, thereby dismissed the application. Aggrieved by the same, the petitioners are before this Court.

2. Learned counsel for the petitioners has submitted that already a suit had been filed by the petitioners, which is pending in O.S.No.470 of 2008 before the Principal Subordinate Court, Coimbatore and yet another suit was also filed by the 1st defendant herein in O.S.No.242 of 2008 before the very same Court for trial. He has further submitted that the suit schedule properties absolutely belong to the petitioners, that the revenue records are also available with them and that the plaintiffs, on the basis of the injunction order, are trying to take possession of the properties. Unless the petitioners are added as parties to the suit, they cannot defend the

case effectively.

3. Learned counsel for the plaintiffs / respondents 1 to 3 have contended that the application has been rejected by the Trial Court mainly on the ground that the petitioners have no title to the property and as such, they will have to individually establish their case. It is further contended that when there is no contact between the petitioners and the respondents 1 to 3, they are not entitled to get themselves impleaded as parties to the suit and therefore, the petition is liable to be dismissed *in limine*.

4. Heard the learned counsel for the parties and perused the material documents available on record.

5. Before going into the merits of the case, this Court feels it appropriate to have a glance at the provisions of Section 19 of the Specific Relief Act, which reads as follows:

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been

displaced by the defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.”

6. The Court below has taken note of the proposition laid down in the judgment of the Hon'ble Supreme Court in Kasturi vs. Iyyamperumal and others (cited supra), wherein the Apex Court elaborately discussed the scope of Section 19 of the Act and rendered a finding against adding unnecessary parties to the suit. For the sake of convenience, the relevant paragraphs of the said judgment are extracted below:

“9. We have carefully considered sub-sections (a) to (e) of Section 19 of the Act. From a careful examination of the aforesaid provisions of sub-sections (a) to (e) of the Specific Relief Act we are of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but they were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of section 19 of the Specific Relief Act.

10. That apart, from a plain reading of section 19 of the Act we are also of the view that this section is exhaustive on the question as to who are the parties against whom a contract for specific performance may be enforced.

11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is

necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker Vs. Small* 1834 (40) English Report 848 made the following observations:

"It is not disputed that, generally, to a bill for a specific performance of a contract for sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as in law, the contract constitutes the right and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."

[Emphasis supplied]

12. The aforesaid decision in 40 E.R. 848 was noted with approval in (1886) 2 Ch. 164 (*De Hogton v. Money*) at page 170 Turner, L.J. Observed:

"Here again his case is met by (1834) 40 E.R. 848 in which case it was distinctly laid down that a purchaser cannot, before his contract is carried into effect, enforce against strangers to the contract equities attaching to the property, a rule which, as it seems to me, is well founded in principle, for if it were otherwise, this Court might be called upon to

adjudicate upon questions which might never arise, as it might appear that the contract either ought not to be, or could not be performed."

13. 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.

14. 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.

15 to 21

22. 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."

7. The present case on hand is analyzed in the light of the aforesaid

judgment of the Apex Court and in consonance with the provisions of the Act, this Court has no other option, but to hold that there are no grounds to interfere with the order of the Trial Court, as the petitioners have failed to satisfy the tests required to consider their claim and more so, in their absence, a decree can be passed in the suit after full fledged trial.

8. Hence, finding no merits in the petition, the Civil Revision Petition is dismissed. It is made clear that since the suit is of the year 2011, the Trial Court is directed to take up the suit and proceed with the same on a day-to-day basis without adjourning the same beyond five working days at any point of time. It is further made clear that in case either of the parties seeks unnecessary adjournment before the Trial Court except on the ground of accident or death, a cost of Rs.2,000/- shall be imposed on the party seeking adjournment for each and every hearing. In case of accident or death, relevant certificate has to be produced in proof thereof and if the Court feels that the certificate issued by the Doctor is a bogus one, the Doctor, who issued the certificate shall be examined to ascertain the genuineness of the certificate and the Trial Court is also at liberty to lodge a complaint against the Doctor, if it is proved to be bogus. It is clarified that the purpose of imposition of costs will not only ensure avoidance of unnecessary adjournment, but also quick disposal of the matter so as to

S.VAIDYANATHAN,J.
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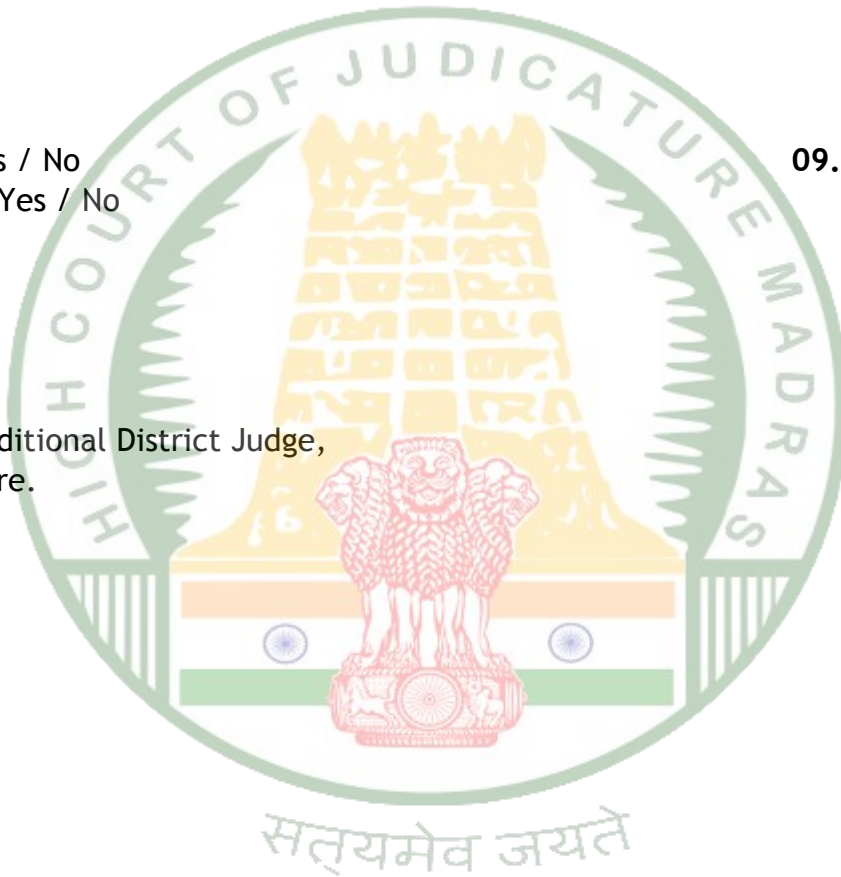
render justice at the earliest point of time. No costs. Consequently,
connected Miscellaneous Petitions are closed.

Index: Yes / No
Internet: Yes / No
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To:

The IV Additional District Judge,
Coimbatore.



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