

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD) No. 2151 of 2018

and

C.M.P.No.13381 of 2018

Selvam

...Petitioner

Vs.

1.Madhaiyan

2.Lakshmi

3.Janaki

4.T.Raja

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.02.2018, made in I.A.No.596 of 2017 in O.S.No. 38 of 2011, on the file of the Subordinate Court, Dharmapuri.

For Petitioner : Mr.C.Prabhakaran

For Respondents : Mr.C.Munusamy

ORDER

The plaintiff in O.S.No.38 of 2011 aggrieved by the dismissal of his application in I.A.No.596 of 2017 for impleading a third party in the suit for specific performance has come up with this revision.

2. The suit was filed on 02.02.2011 seeking performance of an agreement dated 26.06.2008. According to the plaintiff, wife of the first defendant and mother of the defendants 2 and 3 by name, Kaveriammal had agreed to sell the suit property to him for a total consideration of Rs.4,50,000/-. An advance of Rs.4,00,000/- was paid by him on the said date and a period of 3 years has been fixed for paying the balance sale consideration. It is stated that the Kaveriammal died and the suit was filed against her legal representatives namely her husband and two daughters. There was a pre suit notice and a reply. In the reply notice as well as the written statement filed in the suit as early as on 23.05.2012, the defendants had disclosed that they had alienated the property to one Raja. Despite such plea the plaintiff chose to file an application for impleading the said Raja in 2017 nearly 5 years thereafter. The trial Court dismissed the application as belated.

3. Heard Mr.C.Prabakaran, learned counsel for the petitioner and Mr.C.Munusamy, learned counsel for the respondents. Mr.C.Prabakaran would contend that the trial Court erred in dismissing the application for

impleading, more so, where the suit itself would fail if the purchaser after the agreement before the filing of the suit is not made a party to a suit for specific performance.

4. Mr. C.Munusamy, learned counsel for the respondents would submit that even in the reply notice it was stated that the suit property had been sold to one Raja. Despite of such reply, the suit came to be filed only against the owners of the property and not the subsequent purchaser. Though written statement was filed as early as on 23.05.2012, the plaintiff kept quite for nearly five years and thereafter, filed an instant application in I.A.No.596 of 2017 seeking to implead the said Raja, who was examined as D.W.2. According to the affidavit of the petitioner, they came to know about the sale only upon examination of Raja. The said statement is obviously false. The Trial Court, upon a consideration held that there is total negligence on the part of the plaintiff in prosecuting the suit and upon filing of the written statement is fatal to the suit. The inaction on the part of the plaintiff in taking steps to implead the subsequent purchasers cannot be condoned.

5. The suit was filed on 02.02.2011. The written statement was filed on 23.05.2012. In the written statement, the defendants have specifically stated that they have sold the property to one Raja even prior to the filing of the suit. On the filing of such written statement, the plaintiff must have taken steps to implead the said Raja. The plaintiff instituting a suit for specific performance is required to implead the subsequent purchaser in the suit itself. That can be done applying for encumbrance certificate and ascertaining as to whether there was an alienation after the agreement prior to the suit. The suit was filed 2 ½ years, after the agreement of sale. I therefore, find total negligence on the part of the plaintiff in prosecuting the suit. Atleast after filing of the written statement on 23.05.2012, the plaintiff must have taken steps to implead the subsequent purchaser. Having failed to take steps for more than five years, the plaintiff cannot be heard to contend that he did not know the details of the sale and therefore he could not take steps.

7. I am therefore, of the opinion that the Trial Court was perfectly justified in rejecting the application on the ground of the delay. I do not see any error in the order of the Trial Court in order to enable me to interfere with the order of the trial court in this civil revision petition filed under Article 227 of the constitution of India. This civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

03.09.2020

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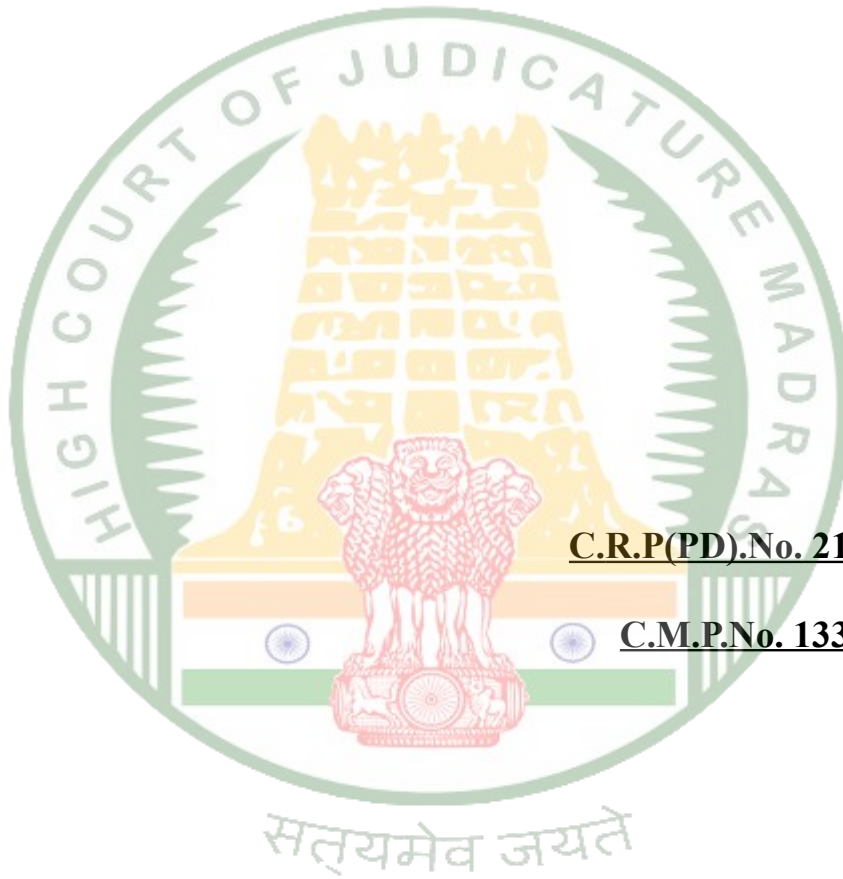
The Sub-Ordinate Court,
Dharmapuri.

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R.SUBRAMANIAN, J.

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