

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2595 of 2018

in

C.M.P.No.15554 of 2018

R.Krishnamurthy

...Petitioner

Vs.

1.Minor Prabhakaran, S/o.Arul
Rep.by Next Friend Mother
Suseela.

2.Radha

3.Rekha @ Revathi

4.Ranjith

5.Ranjini

...Respondents

Prayer:

Civil Revision Petition filed under Article 227 of Indian Constitution, against the order and decretal order dated 26.06.2018 passed in I.A.No.926 of 2017 in O.S.No.96 of 2004 on the file of the learned District Munsif Court, Panruti.

For Petitioner : Mr.S.Kingson Jerold

For Respondents : Mr.Bhuvanesh

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O R D E R

This Civil Revision Petition is at the instance of third party to the suit in O.S.No.96 of 2004 on the file of the District Munsif Court, Panruti, whose application for impleading in I.A.No.926 of 2017 came to be dismissed.

2. The suit in O.S.No.96 of 2004 was filed by the first respondent seeking registration of the sale deed dated

19.08.2003 executed in favour of the plaintiffs by the defendants 1 to 4 in the said suit. The suit is being resisted by the defendants 1 to 4. Pending the said suit, the petitioner, who happens to be the brother of the first defendant in O.S.No.96 of 2004, filed I.A.No.926 of 2017 seeking to implead himself in the said suit claiming that an oral partition took place between him and the first defendant 30 years prior to the filing of the suit and pursuant to the said oral partition he has been in possession and enjoyment of the suit property. Therefore, according to him, the sale deed dated 19.08.2003 is not valid and the first defendant did not have any right to execute a sale deed. This application was resisted by the first respondent/plaintiff contending that the application was collusive in nature and has been filed only to drag on the proceedings.

3. It is also pointed out that the suit is for specific performance and the petitioner who is setting up an adverse title to that of the defendants cannot be added in the suit thereby, expanding/extending the scope of the suit. The trial Court upon consideration of the law relating to impleading in a suit for specific performance, accepted the case of the first respondent/plaintiff and held that the petitioner is neither a necessary party nor a proper party to the suit. On such finding, the trial Court dismissed the application, aggrieved by which, the third party/ petitioner has come up with this Civil Revision Petition.

4. Heard, Mr.S.Kingson Jerold, learned counsel appearing for the petitioner and Mr.Bhuvanesh, learned counsel appearing for the first respondent.

5. The respondents 2 to 5, though served have not appeared either in person or through counsel duly instructed. Even otherwise, it is seen from the records that the respondents 2 to 5 have endorsed "no objection" for the petitioner being impleaded even before the trial Court. Therefore, their presence or absence in this Civil Revision Petition will not make any difference.

6. Mr.S.Kingson Jerold, learned counsel appearing for the petitioner would contend that he claims title to the suit property under oral partition between him and the first defendant and therefore, he is a necessary party. He would also contend that the suit itself is a collusive suit.

7. Contending contra, Mr.Bhuvanesh, learned counsel appearing for the first respondent would submit that the petitioner who claims a rival title cannot be impleaded in a suit for specific performance seeking a limited relief of

registration of the sale deed executed by the first defendant on behalf of the defendants 2 to 4.

8. I have considered the submission by the counsel.

9. The suit in O.S.No.96 of 2004 is only for a limited relief of registration of the sale deed said to have been executed by the first defendant on behalf of the defendants 2 to 4. The defendants are resisting the suit raising various contentions. The petitioner is admittedly a stranger to the contract between the plaintiff and the defendants 1 to 4. The petitioner is setting up an adverse title to that of the defendants and according to the plaintiff, they had conveyed the property belonging to him by way of a sale deed. The title of the plaintiff cannot be gone into in this suit. It is always open to him to initiate appropriate proceedings to establish his title.

10. The Hon'ble Supreme Court has time and again pointed out that a person setting up an independent title or adverse title to that of the parties to the suit for specific performance is not a necessary party to the said suit. In view of the law laid down the trial Court was perfectly justified in dismissing the application for impleading. I do not find any material illegality or irregularity which would enable me to interfere with the order of the trial Court.

11. Hence, this Civil Revision Petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dna

To:

District Munsif Court, Panruti

C.R.P.No.2595 of 2018
in
C.M.P.No.15554 of 2018

SSV(CO)
CS/18/08/2020