

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 9TH DAY OF JULY 2020

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

A.No.8678 of 2018
in
C.S. No.285 of 2014

B.V.Reddy Enterprises Private Limited,
Rep. by its Director Mr.V.Dinesh Reddy,
having Registered Office at
No.232, Kilpauk Garden Road, Kilpauk,
Chennai-600 010

Now at

Old No.31, New No.7, Swarna Home,
1st Floor, Vadivelu Street,
Perambur, Chennai-600 011.

..Plaintiff

-Vs.-

1.Mr.S.Murali Mani,
S/o.late C.S.Mani

2.Mr.S.Balan Mani
S/o.Late C.S.Mani

Both are residing at No.16-A/10,
W.E.A., Karol Bagh,
New Delhi-110 005

Represented by their Power Agent
Mr.Arjunlal Sunderdas,
No.23, Anderson Road,
Chennai-600 006.

3.Mr.Arjunlal Sunderdas,
S/o.Mr.K.Sunderdas,
No.23, Anderson Road,
Chennai-600 006.

4.S.M.Lal,
S/o.K.Sunderdas
No.7, Subbarao Avenue 1st Street,
Chennai 600 006.

(*)5.The Official Assignee
High Court, Madras,
Representing the Estate of Arjunlal Sundardas
(Insolvent)

(*) 5th defendant impleaded as per order dated 17.08.2015 in Application
No.4741 of 2015

A.No.8678 of 2018:

Vellore Institute of Technology(VIT)
Rep by its Trustee G.V.Selvam
having Office at No.54, Thennamaram Street,
Vellore, Vellore District.

..Applicant/Third Party

-Vs.-

1.B.V.Reddy Enterprises Private Limited,
Rep. by its Director Mr.V.Dinesh Reddy,
having Registered Office at
No.232, Kilpauk Garden Road, Kilpauk,
Chennai-600 010

Now at

Old No.31, New No.7, Swarna Home,
1st Floor, Vadivelu Street,
Perambur, Chennai-600 011.

..1st Respondent/Plaintiff

2.Mr.S.Murali Mani,
S/o.Late Mr.C.S.Mani

3.Mr.S.Balan Mani
S/o.Late Mr.C.S.Mani

Both are residing at No.16-A/10,
W.E.A., Karol Bagh,
New Delhi-110 005
Represented by their Power Agent
Mr.Arjunlal Sunderdas,
No.23, Anderson Road,
Chennai-600 006.

..2nd & 3rd Respondents/D1 & D2 Defendants

4.Mr.Arjunlal Sunderdas,
S/o.Mr.K.Sunderdas,
No.23, Anderson Road,
Chennai-600 006.

..4th Respondent/D3 Defendant

5.S.M.Lal,
S/o.K.Sunderdas
No.7, Subbarao Avenue 1st Street,
Chennai 600 006.

..5th Respondent/D4 Defendant

6.The Official Assignee
High Court, Madras,
Representing the Estate of Arjunlal Sundardas
(Insolvent)

..6th Respondent/D5 Defendant

Application praying that this Hon'ble Court be pleased to implead the applicant/third party as 6th defendant in the above suit before this Hon'ble Court.

This Application coming on this day before this court for hearing, the Court made the following Order:

In a suit filed for specific performance of the sale agreement, the applicant herein, who is a third party seeks to implead himself on the ground that he has some substantial interest in the property through his subsequential sale agreement and any decision made in his absence would seriously affect him and would cause great prejudice to him. Therefore, he pleads that he shall be impleaded as a party to the suit.

Private Limited, the first respondent / plaintiff filed a suit for specific performance of a sale agreement dated 13.12.2006 in C.S.No.285 of 2014. However, after cancellation of the sale agreement with the first respondent, the defendants in the above suit / respondents 2 to 5 herein have executed a sale agreement in favour of the applicant/third party after having received the entire sale consideration of Rs.21 Crores. The defendants 1 and 2 acting through the third defendant have failed to perform their part of obligation and therefore, he also filed a suit for specific performance in C.S.No.317 of 2014. Since he had parted with the entire sale consideration of Rs.21 Crores, he has a direct and substantial interest in the subject matter of the suit. Unless he is made as a party, he will not be knowing anything about the progress of the proceeding. If the owners, who have executed a sale agreement act in collusion and connivance with the first respondent / plaintiff in the above suit, his interest will be greatly prejudiced.

3. According to the applicant, the applicant has entered into an agreement after cancellation of the previous agreement with the first respondent / plaintiff in the above suit dated 13.12.2006. By agreement dated 05.04.2013, the fourth respondent has agreed to pay a sum of Rs.62,50,00,000/- in view of cancellation of the previous agreement. The said fourth respondent has become insolvent. Therefore, the Official

Assignee is also impleaded as a party in the suit. The defendants 1 and 2,

namely, the owners of the property have not filed any written statement and remained set *ex-parte*. The Official Assignee filed written statement on their behalf representing the estate of Arjunlal Sundardas. Therefore, the defendants 1 & 2 may not have any interest in pursuing the case. Even though he is not a party to the contract, due to the assignment by subsequent sale agreement after receiving the full sale consideration, the applicant has got substantial interest in the subject matter of the suit property. Therefore, the applicant shall be impleaded as a party to the suit or in the alternative, the suit filed by him in C.S.No.317 of 2014 and the above suit can be taken up for joint and simultaneous trial so that it will avoid multiplicity of proceedings.

4. The learned counsel for applicant would submit that under Order I Rule 10(2) of the Code of Civil Procedure 1908, the Court is vested with extraordinary discretion to add a necessary party to the suit for effective determination or even to delete an unnecessary party. Since the applicant has direct interest in the property, the discretion of the Court shall be exercised in favour of him. He would further submit that in the suit filed by the applicant, an interim injunction was granted not to alienate or encumber the property and it was made absolute till the disposal of the suit.

In such circumstances, the applicant shall be impleaded as a party. The

Official Assignee, who has not placed any materials to establish that the suit property is an asset of the insolvent namely Arjunlal Sundardas, they cannot set up a title and invoke the provisions of the Provincial Insolvency Act, 1920. Therefore, to avoid conflict of decisions in respect of the same subject matter through two different contracts by two different legal entities purported to have the paid entire sale consideration, the applicant shall be either impleaded as a party or the Court shall direct joint trial or simultaneous trial of both the suits.

5. In support of his contention, the learned counsel for the applicant would rely on the following judgments: -

(i) ***RAZIA BEGUM VS. SAHEBZADI ANWAR BEGUM AND OTHERS [1959 SCR 111 = 1958 (SC) 886]***

(ii) ***KASTURI VS. IYYAMPERUMAL AND OTHERS [2005 (6) SC 733 = 2005 (2) CTC 676]***

(iii) ***BHOGADI KANNABABU AND OTHERS VS. VUGGINA PYDAMMA AND OTHERS [2006 (5) SCC 532]***

(iv) ***SUNIL GUPTA VS. KIRAN GIRHOTRA AND OTHERS [2007 (8) SCC 506]***

(v) ***VIDUR IMPEX AND TRADERS PRIVATE LIMITED AND OTHERS VS. TOSH APARTMENTS PRIVATE LIMITED ND OTHERS [2012 (8) SCC 384]***

(vi) ***THOMSON PRESS (INDIA) LIMITED VS. NANAK BUILDERS & INVESTORS P. LTD., [2013 (5) SCC 397 = 2013 (2) CTC 104]***

(vii) LIFE INSURANCE CORPORATION OF INDIA VS. SANJEEV BUILDERS PRIVATE LIMITED AND OTHERS [2018 (11) SCC 722]

(viii) A.NAWAB JOHN AND OTHERS VS. V.N.SUBRAMANIAM [2012 (7) SCC 738]

(ix) SUMTIBAI AND OTHERS VS. PARAS FINANCE CO. [2007 (10) SCC 82]

(x) MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED VS. REGENCY CONVENTION CENTRE AND HOTELS PRIVATE LIMITED AND OTHERS [2010 (7) SCC 417]

(xi) SANJEEVLAL VS. C.I.T., CHANDIGARH [2015 (5) SCC 775]

6. Per contra, learned Senior counsel appearing for the first respondent/plaintiff would contend that on 13.12.2006, the second and third respondents in the above application / defendants 1 and 2, have entered into an agreement of sale through fourth and fifth respondents / defendants 3 and 4. The sale consideration was paid in full by Cheque No.205500 dated 13.12.2006 drawn on BNP Paribas Bank, Chennai Branch and the same was duly encashed by the defendants. Pursuant to the agreement, by a Memorandum of Understanding dated 13.12.2006 another property was also clubbed for development of the same. The fourth respondent/third defendant entered into an agreement dated 23.02.2012 for cancelling the sale agreement subject to compliance of certain terms and conditions. It was a

conditional contract. However, the fourth respondent/third defendant failed to perform the same and hence, the cancellation did not take effect and the sale agreement continued to be in force. Since the first respondent has paid the entire sale consideration and the fourth respondent has failed to perform his part of contract, he filed a suit. The plaintiff in the above suit was examined and elaborately cross examined as P.W.1 and Exs.P1 to P22 were marked on his side. On the side of the defendants, two witnesses, namely, first and second defendants were examined as well as cross examined extensively. When the matter was posted for arguments, the present impleading petition is filed with an ulterior motive to protract the proceedings. A stranger to a contract is not entitled to get impleaded without there being any direct interest over the property. The applicant being neither a necessary nor a formal party is not entitled to implead himself as a party to the suit.

7. The learned counsel for the first respondent would rely on the judgment of the Hon'ble Supreme Court in ***MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED VS. REGENCY CONVENTION CENTRE AND HOTELS PRIVATE LIMITED AND OTHERS [2010 (7) SCC 417]***.

8. The learned counsel appearing for the sixth respondent /

agreement with the fourth respondent, who is adjudged as an insolvent and obtained an order of interim injunction after him being declared as insolvent. Therefore, the agreement itself is not legally enforceable and the applicant is neither necessary nor formal party and therefore, the impleading application is liable to be dismissed in view of the Division Bench judgment of this Court in ***INCOME TAX OFFICER, HUNDI CIRCLE I, MADRAS VS. K.A.GOVINDASWAMY AND OTHERS [AIR 1978 MADRAS 186]***.

9. I have considered the submissions made by the parties.

10. Admitted fact remains that the first respondent in the above application entered into a registered sale agreement dated 13.12.2006 and paid the entire sale consideration by way of cheque, which was encashed by the respondents 2 to 5. Even though it is alleged that on 23.02.2012, it was cancelled by complying certain conditions to be performed by the fourth respondent, there is nothing on record prima facie to evidence the same. The defendants also do not contend the agreement was cancelled. Therefore, in the absence of any prima facie material for cancellation, it has to be construed that the said agreement is still in force. Now that, it has to be seen as to whether the applicant has acquired any substantial interest over the subject matter of the suit property or not. It is stated that he had entered into an agreement on 05.11.2012 and paid a sum of Rs.21 Crores. On the face of

to be seen as to whether the agreement *prima facie* creates any right or not. The agreement, even though states that entire sale consideration has been paid, is very vague on the mode of actual payment. After having paid the entire sale consideration, surprisingly 16 month's time was granted for its performance. Admittedly, the title deeds and other documents are in possession of the first respondent herein. Alleged payment of a huge sum of Rs.21 crores towards total sale consideration without there being any proof and without registering the compulsorily registrable document, does not *prima facie* establish the claim of the applicant having substantial interest in the subject matter. In fact, there is no assignment or transfer of any right through the said unregistered agreement of sale. It is pertinent to note that the agreement of the year 2006 is and the agreement entered into by the applicant on 05.11.2012, during the subsistence of a registered agreement, is an unregistered agreement. It is well settled that substantial interest will be created only on proper conveyance and not by an agreement of sale. As such the applicant, who is an agreement holder does not derive any substantial interest in the suit property nor will he be prejudiced.

11. It is true to state that this Court has discretionary powers under Order I Rule 10(2) of the Code of Civil Procedure, to add or delete a party for rendering effective and substantial judgment. The judgment relied

BEGUM AND OTHERS [1959 SCR 111] lays down the ratio that the parties who have direct interest as distinguished from a commercial interest in the subject matter of litigation shall be added as a party. But, in the present case, the petitioner has not shown that he has any direct interest over the suit property. In that view of the matter, it has to be seen as to whether his presence is required for effectively and completely adjudicate the matter and settle all questions of reasons. In the opinion of this Court, his presence is not necessary for the aforesaid purpose.

12. The judgment relied on by the applicant in **BHOGADI KANNABABU AND OTHERS VS. VUGGINA PYDAMMA AND OTHERS [2006 (5) SCC 532]** will clearly shows that the applicant is not a necessary party.

13. Likewise, the judgment relied on by the applicant in **KASTURI VS. IYYAMPERUMAL AND OTHERS [2005 (2) CTC 676]** wherein it has been held that a stranger to a contract is not entitled for specific performance of the contract for sale, stands in favour of the respondents.

14. The other judgment relied on by the applicant in **SUNIL GUPTA VS. KIRAN GIRHOTRA AND OTHERS [2007 (8) SCC 506]** stands on a difference footing. In that judgment, a transferee *pendent lite* has sought for impleadment. When the property was transferred during the

subsistence of the contract of agreement for sale, certainly transferee *pendent lite* acquires some direct interest in the property, whereas, the applicant is only an agreement holder through an unregistered agreement of sale. Therefore, the said judgment will not apply to the present case on hand.

15. Likewise, the judgment relied on by the applicant in ***VIDUR IMPEX AND TRADERS PRIVATE LIMITED AND OTHERS VS. TOSH APARTMENTS PRIVATE LIMITED AND OTHERS [2012 (8) SCC 384]*** it is clearly held that in a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

16. From the factual background, it could be seen that the applicant has entered into an agreement during the subsistence of the registered sale agreement between the plaintiff/first respondent and respondents 2 to 6. Even in his own admission, after having paid the entire sale consideration giving 16 months' time for registering the sale deed and production of title deeds goes to show that it is not above board. Therefore, the said judgment buttresses the arguments of the respondents.

17. The judgments of the Hon'ble Supreme Court in

INVESTORS PVT. LTD., [2013 (2) CTC 104]; LIFE INSURANCE CORPORATION OF INDIA VS. SANJEEV BUILDERS PRIVATE LIMITED AND OTHERS [2018 (11) SCC 722; and A.NAWAB JOHN AND OTHERS VS. V.N.SUBRAMANIAM [2012 (7) SCC 738] confers the right of the *pendent lite* purchaser for impleadment. But, it is not applicable to the present case.

18. The reliance placed on the judgment of the Hon'ble Supreme Court in **SUMTIBAI AND OTHERS VS. PARAS FINANCE CO. [2007 (10) SCC 82]** that if the party seeking impleadment shows a fair semblance of title of interest can certainly entitled to file an application for impleadment. However, in the present case on hand, as observed above, the applicant has not shown any semblance of title of interest in the subject matter of litigation. In a contract between the third parties, where the presence of the applicant does not require for effective and complete adjudication for settlement of the questions involved in the suit, he is not a necessary party and he is not entitled to get impleaded.

19. The judgment of the Hon'ble Supreme Court in **MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED VS. REGENCY CONVENTION CENTRE AND HOTELS PRIVATE LIMITED AND OTHERS [2010 (7) SCC 417]** does not support the case of the applicant.

20. The judgment of the Hon'ble Supreme Court in ***SANJEEVLAL VS. C.I.T., CHANDIGARH [2015 (5) SCC 775]*** clearly lays down that ownership of the property can pass only on registration of the instrument and handing over delivery of possession. The registration of the conveyance of the property only will create interest over the property. The agreement for sale does not create any interest or charge in the property. The further contention of the applicant that the Official Assignee has not established that the estate belongs to the fourth respondent is concerned, it is the look out of the parties in the pending *lis*, a third party cannot make hue and cry. Admittedly, the materials placed before this Court shows that the application filed by the sixth respondent/Official Assignee, for an interim direction directing the owners of the property were dismissed as time barred. The issue as to whether the subject matter of the litigation vests with the sixth respondent in view of Section 17 the Provincial Insolvency Act, 1920, and the effect of the same in view of Section 52 of the Act can be decided at the time of disposal of the suit.

21. In the light of the Division Bench judgment of this Court in ***INCOME TAX OFFICER, HUNDI CIRCLE I, MADRAS VS. K.A.GOVINDASWAMY AND OTHERS [AIR 1978 MADRAS 186]*** the

is not necessary. The interest of the creditors of the insolvent will be taken care of by the Official Assignee.

22. In the judgment of the Hon'ble Supreme Court relied on by the first respondent / plaintiff in ***MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED VS. REGENCY CONVENTION CENTRE AND HOTELS PRIVATE LIMITED AND OTHERS [2010 (7) SCC 417]*** it is observed as under:

"14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is

liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

16.....

22. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or

23.....

26. If the principles relating to impleadment, are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in Kasturi and Sumtibai are with reference to the facts and circumstances of the respective case. In Kasturi, this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In Sumtibai, this Court held that a person having semblance of a title can be considered as a proper party. Sumtibai did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party."

The above judgment discusses the judgment of the Hon'ble Supreme Court

<https://hcservices.ecoins.gov.in/hcservices/> in **KASTURI VS. IYYAMPERUMAL** [2005 (6) SCC 733] wherein it has

been laid down that the third party strangers are not entitled to be impleaded in a contract. In that view of the matter, the applicant is neither necessary nor proper party and as such, he is not entitled to get impleaded in the above application.

23. In fine, the application stands dismissed.

Sd./-M.G.R.J.

09.07.2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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