



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2020

CORAM :

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THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P(PD) (MD)No.296 of 2011

N.T.Sivasubramanian

... Petitioner/Petitioner/3rd Party

Vs.

1.S.Namasivayam

2. S.Mahadevan

3.N.Amutha

4.Minor Sethuramalingam

... Respondents 1 to 4/Respondents 1 to 4
Plaintiffs

5.Eswara Vadivammal

6.Pitchaiya

7.P.Ramakrishnan

8.Meenakshi

9.Shanmugam

10.Parvathi

11.P.Subbulakshmi

12.Saraswathi

13.Narayani

14.Brahmani

15.Saraswathi Ammal

16.Austin

17.K.P.Srinivasan

18.Murugan

... Respondents 5 to 18/Respondents
5 to 18/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the petition and docket sheet order passed in I.A.No.120 of 2010 in O.S.No.49 of 2008 on the file of the Principal District Court, Tuticorin dated 28.07.2010.

For Petitioner : Mr.M.R.S.Prabhu

For R1 to R4 : Mr.A.R.M.Ramesh

For R6 to 18 : No appearance

O R D E R

The petitioner, who is a third party to the suit in O.S.No. 49 of 2008, aggrieved by the dismissal of his application to implead himself in the said suit, has come up with this Revision.



2. The suit in O.S.No.49 of 2008 is a suit for partition between the legal heirs of one Sethuramalingam, who died intestate on 19.08.2007. Claiming that the said Sethuramalingam has executed an agreement of sale in his favour, the petitioner has filed O.S.No.117 of 2010 against the legal heirs of Sethuramalingam seeking specific performance of the agreement dated 14.07.2007. It is stated that the suit for specific performance is pending. The petitioner sought for impleading himself in the suit for partition namely O.S.No.49 of 2008 on the strength of the agreement of sale. The trial court dismissed the said application concluding that the petitioner has no right to seek to implead himself in a partition suit inasmuch as the agreement of sale itself does not create any interest in immovable property. Aggrieved, the petitioner has come up with this Civil Revision Petition.

3. I have heard Mr.M.R.S.Prabhu, learned counsel appearing for the petitioner and Mr.A.R.M.Ramesh, learned counsel appearing for the respondents 1 to 4.

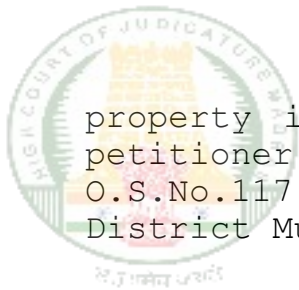
4. A memo has been filed stating that the fifth respondent died pending revision leaving behind the respondents 6 to 15 as her legal heirs. The memo is taken on file. The respondents 6 to 15 are recorded as the legal heirs of the deceased fifth respondent. Though the respondents 6 to 12, 14 and 15 have been served none of them appeared in person or through counsel duly instructed. The 13th respondent has not been served. The 13th respondent was added as a party only as the legal heir of Sethuramalingam. Since other legal heirs of Sethuramalingam are already on record, there is sufficient representation of the estate of Sethuramalingam, notice to the 13th respondent is dispensed with.

5. Mr.Prabhu, learned counsel appearing for the petitioner would contend that the suit being one for partition and the petitioner, having instituted another suit for specific performance in respect of certain items of properties involved in the partition suit in O.S.No.49 of 2008, he is a proper and necessary party to the suit.

6. Contending contra, Mr.Ramesh, learned counsel appearing for the respondents 1 to 4 would submit that an agreement of sale does not create any interest on immovable property. Therefore, the pendency of the suit for specific performance would not clothe the petitioner the right to seek to implead himself in a suit for partition filed between the legal heirs of Sethuramalingam.

7. I have considered the rival submissions.

8. As rightly pointed out by the learned counsel appearing for the respondents 1 to 4, an agreement of sale or pendency of suit for specific performance will not create any interest in immovable



property in favour of the plaintiff or an agreement holder. The petitioner has admittedly filed a suit for specific performance in O.S.No.117 of 2010 and the same is pending on the file of the District Munsif Court, Srivaikundam.

9. It is well open to the petitioner to prosecute the said suit and if he succeeds in the suit for specific performance, all the legal heirs of Sethuramalingam will be bound by the decree and they will have to execute a sale deed in favour of the petitioner. Therefore, the petitioner cannot be held to be a necessary party in a suit for partition.

10. Explanation to Section 54 of the Transfer of Property Act, 1882, makes it clear that an agreement of sale by itself does not create any interest in immovable property. Therefore, the petitioner could not claim to be a person interested or proper and necessary party in the suit for partition between the heirs of the Agreement vendor. Hence, I do not find merit in the Civil Revision Petition and the same is dismissed. No costs. However, it is made clear that the dismissal of this Civil Revision Petition will not have any bearing in the suit for specific performance filed by the petitioner in O.S.No.117 of 2010 on the file of the District Munsif Court, Srivaikundam.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

CM

To,

1.The District Munsif , Srivaikundam.

2.The Principal District Judge, Tuticorin

+1 CC to Mr.A.R.M.RAMESH, Advocate (SR-260[F] dated 06/01/2020)

+1 CC to Mr.V.K.VIJAYARAGAVAN, Advocate (SR-365[F] dated 06/01/2020)

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