



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 22.07.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

C.R.P. (PD) (MD)No.256 of 2014

and

MP(MD)No.1 of 2014

WEB COPY

M.Ezhilarasi

... Revision Petitioner/Proposed
party /3rd party

Vs.

1.M.Jothi

... 1st Respondent/Petitioner/
Plaintiff

2.J.Rama

... 2nd Respondent/Respondent/
Defendant

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.12.2013 in I.A.No.109 of 2012 in O.S.No.319 of 2011 on the file of the learned Principal District Munsif, Madurai Town.

For Petitioner : Mr.VR.Shanmuganathan

For R1 : Mr.J.Barathan

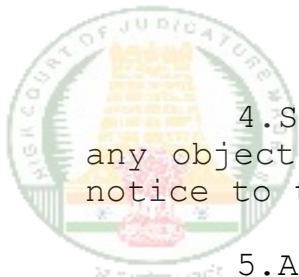
For R2 : Disd

ORDER

This Civil Revision Petition has been filed by the proposed party against the allowing of I.A.No.109 of 2012 in O.S.No.319 of 2011 on the file of the learned Principal District Munsif. Madurai Town, dated 05.03.2013.

2.The first respondent herein has filed a suit in O.S.No.319 of 2011 on the file of the Principal District Munsif, Madurai Town, against the second respondent herein for refund of the advance amount of Rs.50,000/- with interest at the rate of 6% per annum. During pendency of the said suit, the first respondent has filed an application in I.A.No.109 of 2012 under Order 1 Rule 10 (2) CPC to implead the petitioner herein as second defendant. The learned Principal District Munsif, Madurai Town, after hearing both sides, has allowed the said petition by the order dated 05.12.2017.

3.Aggrieved by the same, the proposed party has filed the present Civil Revision Petition.



4.Since the second respondent is a defendant, he may not have any objection for disposing of this Civil Revision Petition. Hence, notice to the second respondent is dispensed with.

5.After hearing the learned counsel for the revision petitioner and the learned counsel for the first respondent/plaintiff and perusing the materials filed along with Civil Revision Petition, order is being passed.

6.The learned counsel for the petitioner has submitted that the case of the first respondent is that she entered into a sale agreement with the second respondent, but, subsequently, she did not pursue the agreement and on the contrary, she chose to file a suit for re-fund of the advance amount. He further submitted that in the said suit, the first respondent has not asked for any charge over the property. In the said circumstances, the petitioner herein, is neither a necessary party nor a proper party to decide the issue in the aforesaid suit. He further submitted that in the case of **Mumbai International Airport Private Limited Vs Regency Convention Centre and Hotels Private Limited and others** published in 2010 (7) **Supreme Court Cases 417**, the Hon'ble Supreme Court has held that discretion of Court to add a person as party, is limited to persons found to be necessary party or proper party. He further submitted that in the said decision, the Hon'ble Supreme Court, has also held that mere likelihood of a third party to secure a right/interest in a suit property in case dismissal of specific performance suit does not make such party a necessary or proper party, and hence, he prayed to allow the Civil Revision Petition and set aside the order passed by the learned Principal District Munsif, Madurai Town, in I.A.No.109 of 2012 in O.S.No.319 of 2011.

7.Per contra, the learned counsel for the first respondent/plaintiff has submitted that the first respondent entered into a sale agreement with the second respondent for purchasing the property belongs to the second respondent and subsequently, the second respondent's son-in-law committed suicide in the said property, and hence, sentimentally, the first respondent does not want to purchase the said property and accordingly, she cancelled the said agreement by sending a lawyer's notice and filed a suit for return of advance amount. He further submitted that during pendency of the said suit, the first respondent has sold the property to the second respondent. He further submitted that as per Section 55 (6) (b) of the Transfer of Property Act, the first respondent is entitled to have a charge over the said property and hence, she filed I.A.No.109 of 2012 to implead the petitioner herein as a party. He further submitted that taking into consideration the aforesaid facts, the learned Principal District Munsif, Madurai Town, has rightly allowed the said petition and therefore, he prayed to dismiss the Civil Revision Petition.



8. In the counter filed by the petitioner in I.A.No.109 of 2012, she has admitted that she purchased the property from the first respondent/defendant. However, she contended that at the time of purchase, neither the petitioner nor the first respondent informed to her about the sale agreement entered between them. She further stated that the said agreement is an un-registered one and hence, she is not having any knowledge about the said agreement. Further, she has stated in para 7 of the counter that since the first respondent herein gave up her right over the property by terminating the agreement, unless she obtained a decree for refund of sale advance, she cannot claim any right over the property.

9. During argument, the learned counsel for the first respondent has submitted that the first respondent has already filed an application in I.A.No.709 of 2018 to incorporate the prayer for creating charge over the property and the said petition is still pending.

10. Taking into consideration the aforesaid facts, this Court is of the view that the petitioner is a necessary party in the aforesaid suit. In case, the Trial Court comes to the conclusion that the first respondent is entitled to get a decree for re-fund of sale advance amount and for recovery of the said amount she is entitled to have a charge over the said property, the right of the petitioner will be affected. Without impleading the petitioner as a party, if any decree is passed creating charge over the property, at the time of execution of the decree, the petitioner may raise objections that the said decree will not bind her. Therefore, this Court is of the view that the presence of the petitioner is absolutely necessary for deciding the suit.

11. In the case of **Mumbai International Airport Private Limited Vs Regency Convention Centre and Hotels Private Limited and others** (Cited Supra), the appellant filed an application seeking impleadment as an additional defendant in the suit. The plea raised therein was that in view of the appellant's object to make the Airport as a world class airport, the appellant's interest was likely to be directly affected if any relief was granted to the plaintiff. The said application was resisted by both the plaintiff and the Airports Authority of India (AAI). A single Judge of the High Court dismissed that application. That decision was upheld by a Division Bench on the ground that the appellant was not a necessary party. As against the same, the proposed party has filed an appeal before the Hon'ble Supreme Court by filing Special Leave Petition. Taking into consideration the facts and circumstances of the said case, the Hon'ble Supreme Court has held that the appellant therein was neither a necessary party nor a proper party. Whereas, in this case, the plaintiff herself has filed a petition to implead the petitioner. Therefore, the aforesaid decision will not apply to the facts of this case. Further, as already pointed out that the



plaintiff has filed a petition to incorporate the prayer for creating a charge over the property. In such a case, if the petitioner is participated in the suit she could effectively defend her case.

12. For the aforesaid reasons, this Court does not find any merit in this Civil Revision Petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, a liberty is given to the petitioner to move a petition to delete herself as a defendant, in case the amendment petition in I.A.No.709 of 2018 is dismissed. The Trial Court is directed to dispose of the application in I.A.No.709 of 2018 and also the suit in O.S.No.319 of 2011 in accordance with law uninfluenced by any of the observations made by this Court in this Civil Revision Petition.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

dss

To

1. The Principal District Munsif,
Madurai Town.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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and
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AP(25/08/2020) 4P 4C