



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP PD(MD)Nos.2046 & 2047 of 2019

Solaian

rep.by through his Special power agent

Duraisingam

.. Petitioner/2nd Respondent/2nd
Defendant in both CRPs.

Vs.

Balasubramanian

Kavitha

... Respondents 1 & 2 in both CRPs.

The Managing Director,
Arulmighy Veerakaliyamman Koil
Aranthangi.

..3rdrespondent in CRP(MD)
No.2047/2019

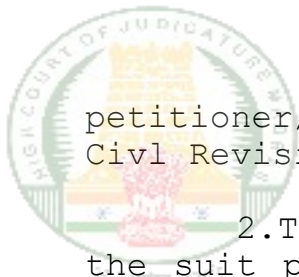
CRP PD(MD)No.2046 of 2019 filed under Article 227 of the Constitution of India to call for the records of the Subordinate Court Aranthangi made in I.A.No.317 of 2019 in OS No.4 of 2017 and set aside the Fair and Decreetal order dated 17.07.2019.

CRP (MD)No.2047 of 2019 filed under Article 227 of the Constitution of India to call for the records of the Subordinate Court Aranthangi made in IA No.318 of 2019 in OS No.5 of 2017 and set aside the Fair and Decreetal order dated 17.07.2019.

For Petitioner : Mr.D.Rameshkumar
For R1 & R2 : Mr.P.T.Thiraviam
in both CRPs.
For R3 : No appearance
in CRP(MD)No.2047/2019

COMMON ORDER

The first respondent herein/plaintiff filed two suits against the second respondent herein in O.S.Nos.4 and 5 of 2019 on the file of the Sub Court, Aranthangi for the relief of specific performance. During pendency of the said suits, the petitioner herein has been impleaded in the said suits as 2nd and 3rd defendants respectively vide order dated 18.04.2017 in I.A.Nos.290 and 291 of 2017. Thereafter, the first respondent/plaintiff has filed applications in I.A.Nos.317 and 318 of 2019 to amend the plaint and thereby direct the petitioner herein and first defendant to execute the sale deed in his favour. The learned trial Judge, after considering the material facts, allowed the petitions and granted the relief as prayed for, on condition to pay a sum of Rs.1,000/- to the defendants. Challenging the said orders of the trial Court, the



petitioner/2nd and 3rd defendants respectively has filed the present Civil Revision Petitions before this Court.

2.The learned counsel for the petitioner would submit that the suit property was originally belonged to the second respondent herein/first defendant and she entered into a sale agreement with the petitioner herein on 13.01.2000 and based on the said agreement, he filed a suit for specific performance in O.S.No.127 of 2004 and got an *ex parte* decree and based on which, he filed an execution petition and got a sale deed registered in his favour and subsequently taken possession of the property and patta also changed in his name and now, he is in possession and enjoyment of the suit property. Subsequently, the second respondent/first defendant alleged to have executed a sale agreement on 04.10.2001 in favour of the plaintiff to sell the suit properties in his favour. But, as per the agreement, sale deed has not been executed in favour of the plaintiff. Therefore, he filed the suits for specific performance in O.S.Nos.124 and 125 of 2003 (renumbered as O.S.Nos.4 and 5 of 2017). During pendency of these suits, the plaintiff filed applications in I.A.Nos.290 and 291 of 2017 to implead the petitioner herein as one of the defendants in the suit. The same was allowed. After impleading the petitioner herein as a defendant in the suits, the plaintiff filed the applications in I.A.Nos.317 and 318 of 2019 to amend the complaints and the said petitions are allowed, which is contrary to law. He would further submit that the sale agreement is an unregistered one and there is a collusive suit.

3.The learned counsel would also submit that the suit for specific performance cannot be converted into as a suit for title. The parties to the agreement can alone file the suit and third party need not be impleaded as a party and title need not be decided or challenged or questioned in a suit for specific performance. Therefore, the orders passed by the trial Court are liable to be set aside. In support of the said contentions, he relied on the decision of the Hon'ble Supreme Court in (2008) 5 MLJ 424 (SC) [Bharat Karasondas Thakkar V. Kiran Construction Co. and others].

4.Heard the learned counsel on either side and perused the entire materials available on record.

5.Though the learned counsel for the petitioner would submit that in the suit for specific performance, third party cannot be impleaded and title cannot be decided, when a petition was filed before the Court below for impleading the petitioner herein as a defendant and the Court has also ordered and impleaded him as a defendant in the suit, he has not challenged that order. Now, after filing the amendment petitions and after passing orders in the said petitions regarding amendment of the complaint, he is challenging the same. Further, it is seen that the sale agreement dated 13.01.2000 is an unregistered agreement, based on which, he got an *ex parte* decree and the second respondent herein has not challenged the same,



which itself shows that it is a collusive decree. Further, the agreement dated 04.10.2001 executed in favour of the first respondent/plaintiff in the suits are registered sale agreements. However, the petitioner has already been impleaded as one of the defendants in the suits. Therefore, the citation referred to by the learned counsel for the petitioner is not applicable to facts of the case on hand and the facts and circumstances of the case mentioned in the decision referred to supra are entirely different from the facts and circumstances of the case on hand. Further, whatever the defence taken by the petitioner, it should be only decided after the evidence is taken and not at this stage. Therefore, even if the plaints are amended, no prejudice would be caused to him. Under these circumstances, this Court has not found any perversity in the orders passed by the trial Court. There is no merit in the Civil Revision Petitions and same are liable to be dismissed and accordingly, they are dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To
The Sub Court, Aranthangi.

CRP PD(MD)Nos.2046 & 2047 of 2019

SMA/24/03/2020/3P/2C