



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Eighth day of December Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE S.S.SUNDAR

CMP.No.5851 of 2020

in AS.No.397 of 2018

E.KESAVAN

[PETITIONER]

Vs

1 A. SIVASUBRAMANIAM

[RESPONDENTS]

2 K.PALANIVELU

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the present petitioner/proposed respondent as 2nd respondent in the above AS.No.397/2018 [in CMP.No.5851 of 2020].

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.C.UMA SHANKAR, Advocate for M/S.S.PERIYASAMY, Advocate for the petitioner, the court made the following order:-

This petition is filed by a third party to the appeal to implead him as second respondent in the appeal suit in A.S. No.397 of 2018.

2. The petitioner admitted that he is a third party. The appellant in this appeal, as plaintiff, filed a suit in O.S. No.188 of 2004 for specific performance against the respondent. It is admitted that the said suit was dismissed and the appeal is preferred by the plaintiff. It is admitted that the respondent in this appeal is the son of one Kailasa Gounder. It is the case of the petitioner that other legal representatives of the said Kailasa Gounder have jointly executed a sale deed in favour of the petitioner by a sale deed dated 11.01.2008. It is also stated that the petitioner is in enjoyment of the property. Stating that the petitioner is a bonafide purchaser of the substantial portion of suit property and that he is in possession of the same, the petitioner has come forward with a petition to implead himself as second respondent in the appeal suit.



3. Learned counsel for the petitioner submitted that the petitioner has purchased the share of other legal heirs of Kailasa Gounder. It is stated by the learned counsel for the petitioner that the respondent had agreed to sell the suit property to the petitioner.

3. The suit property is described as an extent of 1.77 Acres comprised in S.Nos.119/5, 119/7 in Rasipuram Taluk, Rasipuram Village. The property stated to have been purchased by the petitioner from other legal representatives is not the property that was referred to in the plaint. This fact is admitted by the petitioner's counsel. Even assuming that there is some overlapping, the petitioner may have a different cause of action to proceed against any of the parties. In a suit for specific performance, the issue that may arise for consideration is regarding the genuineness of the agreement or issues in relation to the enforceability of the agreement of sale between the plaintiff and defendant. The scope of litigation cannot be enlarged by impleading a third party who do not claim any right under any of the parties to the lis. In that view of the matter, this petition is dismissed.

Post the main appeal after two weeks.

-sd/-

08/12/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE ADDITIONAL DISTRICT JUDGE,
NAMAKKAL.

Order
in
CMP.No.5851 of 2020
in AS.No.397 of 2018

Date :08/12/2021

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