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CRP.PD.No.1129/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.1129/2019 and CMP.No.7343/2019

[Video Conferencing]

S.Rajakumar

.. Petitioner

Vs.

1.Kamatchi

2.Sridevi

3.Arunkumar

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution to set aside the Fair and Decreetal order made in I.A.No.465/2018 in OS.No.41/2003 dated 03.01.2019 passed by the learned Additional District Munsif Court at Chidambaram.

For Petitioner	:	Mr.S.Swaminathan
For Respondents	:	Mr.S.Sounthar

ORDER

(1) The Civil Revision Petition is directed against the order in IA.No.465/2018 dismissing the petition filed by the revision petitioner to reject the plaint in OS.No.41/2003 filed by the respondents/plaintiffs on the file of the learned Additional District



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- (2) The petitioner is the 3rd defendant herein in the Suit in OS.No.41/2003. The respondents in the Civil Revision Petition as plaintiffs filed the Suit for specific performance of an Agreement of Sale dated 07.11.1984. Since the Suit itself was filed based on the endorsement dated 02.04.2000, it is stated in the plaint that the cause of action for filing the Suit arose only on 02.04.2000.
- (3) The Suit was contested by the 3rd defendant/petitioner by filing a detailed written statement on 06.09.2017. Immediately after the written statement was filed, the revision petitioner/3rd defendant filed an application in IA.No.465/2018 to reject the plaint under Order VII Rule 11 of C.P.C. It is admitted by the learned counsel appearing for the revision petitioner/3rd defendant that the revision petitioner/3rd defendant himself was impleaded in the Suit only after the examination of witnesses, on behalf of plaintiffs in the Suit.
- (4) After considering the materials and facts, the Trial Court found that the issue relating to limitation is a triable issue and it is not possible to decide the question on the basis of mere statements of



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facts by both sides.

- (5) It is also seen that the 3rd respondent herein is a third party who is not connected with the Sale Agreement which was sought to be enforced in the Suit. It is seen that the 3rd defendant/petitioner was impleaded at the instance of plaintiffs alleging that he has encroached into a portion of the property. However, the 3rd defendant/petitioner filed the application under Order VII Rule 11 of C.P.C., to reject the plaint.
- (6) Considering the issues, the sequence of events and facts highlighted, this Court finds that the application filed by the 3rd defendant/petitioner in the Suit in OS.No.41/2003 under order VII Rule 11 C.P.C., was with an ulterior motive.
- (7) This Court is unable to find any bona fides in the attempt made by the 3rd defendant/petitioner to prevent the Court from resolving the issue between the holder of agreement and the owner whose property is the subject matter of this Suit.
- (8) Merely because the plaintiffs have committed the mistakes in impleading the 3rd defendant/petitioner who is a stranger to the litigation, the petition under Order VII Rule 11 C.P.C., at the



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informer of a stranger cannot be entertained to non suit the plaintiffs whose plaint relief was for specific performance against defendants 1 and 2 and the 3rd defendant/petitioner cannot maintain a petition under order VII Rule 11 of C.P.C. Assuming that the Suit is also for declaration, and a prayer is also sought for against the 3rd defendant/petitioner, at the instance of the third defendant, the plaint can never be rejected as he is not interested in the first part of the relief where the respondents/plaintiffs want enforcement of a Suit Agreement against defendants 1 and 2.

- (9) In the result, the Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2021

cda

Internet : Yes

To

1.The Additional District Munsif Court, Chidambaram.



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S.S.SUNDAR, J.,

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