

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2020

PRONOUNCED ON : 22.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD).No.1087 of 2019

and

C.M.P.No.7126 of 2019

1.B.Sugendran

2.Rukumani

...Petitioners/Plaintiffs 1 & 3

.. Vs ..

1.Rajarathinam

... 1st Respondent/Third party

2.S.M.H.Sheik Mohammed

... 2nd Respondent/defendant

3.B.Kanchana @ Sridevi

4.M.Anuradha

...Respondents 3 & 4/
Plaintiffs 2 & 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal in I.A.No.736 of 2015 in O.S.No.85 of 2011 dated 25.01.2019 on the file of the Subordinate Judge @ Poonamalle in allowing the application filed under Order 1 Rule 10 (2) of the Code of Civil Procedure and thereby impleading the 1st respondent as a party defendant to the suit.

For Petitioners : Mr.V.Raghavachari

For R1 : Mr.J.Srinivasa Mohan
for M/s.T.V.J.Associates

For R2 : Mr.Mohana Murali

For R3 & R4 : Not ready in Notice (No appearance)

ORDER
(The case has been heard through video conference)

This petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.736 of 2015 in O.S.No.85 of 2011, dated 25.01.2019, on the file of the learned Subordinate Judge, Poonamalle.

2.The plaintiffs 1 and 3 in the suit in O.S.No.85 of 2011 are the revision petitioners herein.

3.For the sake of convenience, the parties are referred to as per the ranking before the Trial Court viz., plaintiffs, defendant and proposed parties.

4.The factual matrix of the case leading to filing of the above revision petition are as under:

(a)The suit property relates to S.No.91 of an extent 1.53 acres in Nerkundram Village, Madurvoyal Taluk, Thiruvallur District.

(b)The plaintiffs have filed the above said suit in O.S.No.85 of 2011, on the file of the learned Subordinate Judge, Poonamallee, to

challenge the compromise decree passed in O.S.No. 137 of 2010, on the file of the learned Subordinate Judge, Poonamallee, dated 15.09.2010, alleging that the same has been obtained by fraud and hence, sought the declaration that the decree is null and void.

(c)The plaintiffs claim to be the owners of the suit property and that they appointed the defendant as their power agent to take care of the suit property. But as the defendant did not submit the accounts and hand over the sale consideration of another property in S.No.92, the plaintiffs cancelled the power deed in favour of the defendant and executed a fresh power deed in favour of the 1st plaintiff.

(d)The defendant has filed suit in O.S.No.137 of 2010 challenging the cancellation of power deed. It is alleged that the 1st plaintiff as power agent of the other plaintiffs, without the consent of the other plaintiffs, had entered into compromise with the defendant by tampering the ages in the compromise.

(e)As per the pleading in the Interlocutory Application viz., I.A.No.736 of 2015, it averred that, at this stage the defendant

entered into agreement of sale with the petitioner/proposed party in December 2012.

(f) Subsequent to the compromise, a dispute arose between the plaintiffs and the defendant and hence, the owners have filed the present suit in O.S.No. 85 of 2011 for the relief as stated supra. During the pendency of the above said suit in O.S.No. 85 of 2011, the first respondent herein as a third party has filed an application in I.A.No. 736 of 2015 under Order 1 Rule 10(2) of CPC to implead him as second defendant in the main suit. After filing the counter and during the enquiry, on behalf of the respondents in the above said I.A.No.736 of 2015, Exs.R1 to R8 have been marked and no oral evidence or documentary evidence has been filed on behalf of the petitioner. The learned Subordinate Judge, Poonamallee, by an order dated 25.01.2019 had allowed the said I.A., and ordered the third proposed party/first respondent herein to be impleaded as a second defendant in the suit in O.S.No.85 of 2011. Hence, the CRP.

5. Heard Mr.Ragavachari, learned counsel appearing for the revision petitioners, Mr.J.Srinivasa Mohan learned counsel appearing for the first respondent and Mr.Mohana Murali, learned counsel

appearing for the second respondent.

6.This revision petition has been filed under Article 227 of the Constitution of India to challenge the validity of the order made in I.A.No.736 of 2015 in O.S.No.85 of 2011 dated 25.01.2019 on the file of the Subordinate Judge, Poonamalle in allowing the application filed under Order 1 Rule 10 (2) of the C.P.C., and thereby impleading the 1st respondent as a party defendant to the suit.

7.The learned counsel for the revision petitioners would contend that the proposed party is only an agreement holder from the general power of attorney and hence, he is not a necessary party to the suit, which has to declare a decree obtained in earlier suit in O.S.No.137 of 2010 as null and void.

8.Mr.J.Srinivasamohan, learned counsel appearing for the first respondent, has filed additional typed set of papers and submitted that there are three more suits in respect of all the parties are pending before the Lower Court in O.S.No. 112 of 2015, pending before the Sub Court, wherein, the sister has filed the suit against the brother and the general power of attorney agent herein, while

the general power of attorney holder has filed a suit in O.S.No. 291 of 2015 on the file of the Subordinate Court, Poonamallee, in respect of portion of the property against the subsequent purchaser and owner while O.S.No.82 of 2018, is pending before the District Court filed by the agreement holder against the owner represented through the general power of attorney agent for specific performance of sale agreement.

9.Further, the learned counsel for the first respondent would draw my attention to the fact that the original suit in O.S.No. 137 of 2010 has been filed by the power of attorney agent against the owner, has been compromised. Based upon the said compromise decree, power of attorney agent has entered into agreement of sale with the defendant in the said suit with Rs.3.5 crores as sale consideration Now the owner has filed present O.S.No.85 of 2011 to declare the said compromise decree as null and void and hence, further contended that both the owner and the power of attorney agent were hand in glove with each other and they wanted to defraud the third party/the first respondent herein.

10.Per contra, Mr.Mohanamurali, learned counsel for the

second respondent/power of attorney agent would contend that the very filing of the above said suit in O.S.No.85 of 2011 by the land owners to declare compromise decree as null and void was only on at the instigation of the agreement holder viz., the third party herein.

11.Be that as it may, each one of party is making allegation against the other two parties as if they are hand in glove with each other.

12.On a perusal of the plaint in O.S.No.137 of 2010, compromise decree was granted by the learned Subordinate Judge, Poonamallee, on 15.09.2010. By virtue of the above said compromise, properties sold by the power of attorney agent under the sale deed document No.1539 of 2007, Sub Registrar Office, Virugambakkam, Chennai, has been confirmed by the land owner since, it has already been sold to one Mr.Sivakumar which is stated in the clause VI of the said compromise deed. Now the third party/ agreement holder from power agent has filed above said I.A., under the Order I Rule 10(2) of the CPC to implead himself as a party defendant in the suit.

13.The plaintiffs are the "Dominus litus" and they have right to choose the party against whom they want the relief.

14.The Judgment reported in **AIR 1969 P & H 57 - (Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal)**, it held as follows:

"As a rule, the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litis. He is the master of the suit. He cannot be compelled to fight against a person against whom he does not claim any relief. If opposition by the plaintiff to the addition of parties is to be disregarded as a rule, it would be putting a premium on the undesirable practice of third parties intruding to ventilate their own grievances, into a litigation commenced by one at his own expense against another. The word 'may' in sub-rule (2) imports a discretion. In exercising that discretion, the Courts will invariably take into account the wishes of the plaintiff before adding a third person as a defendant to his suit." (emphasis supplied)

In the decision of the Allahabad High Court in **Committee of Management etc. AIR 1995 All. 7** in a writ petition a prayer had

been made for an order or direction in the nature of certiorari to quash the plaint and all proceedings in a particular suit. A particular individual had filed an application for Committee of Management and he had not been made a party. It was found that he would be a person affected in case another person was allowed to act as Manager. The lower Court overlooked this glaring feature of the case and this was sought to be rectified by the High Court. It was in those circumstances, the High Court held that

"the theory of dominus litus should not be over-stretched in the matter of impleading of parties, as it was the duty of the court of ensure that is for deciding the real matter in dispute, a person was a necessary party, the court could order such person to be impleaded and merely because of the plaintiff did not choose to implead a person was not sufficient for rejection of an application for being impleaded"
(emphasis supplied)

It is to be stated that the Allahabad High Court further observed as follows:

"the provisions of Order 1, Rule 10(2) C.P.C were very wide and the powers of the Court were equally extensive. Even without an application to be impleaded as a party, the court could at any stage of the proceedings order that the name of any party, who

ought to have been joined whether as a plaintiff or defendant or whose presence before the Court might be necessary in order to enable the Court effectually and completely to adjudicate upon the settle all the questions involved in the suit, be added.” (emphasis supplied)

15.Admittedly, the above appreciation of law, as pronounced by the High Courts are on principle are perfect. However, the same has to be applied having regard to the facts and circumstances of the case.

16(a).For the relief sought for in the suit viz., for setting aside the compromise deed passed in O.S.No.137 of 2010, on the file of the Subordinate Judge, Poonamalle, the 1st respondent is not a necessary party. He claims to have entered into an agreement of sale with the defendant subsequent to the decree in O.S.No.137 of 2010 and subsequent to the present suit in O.S.No.85 of 2011. Therefore, in view of the above factual position, this Court finds that his addition would cause embarrassment to the trial of the suit.

16(b).The petitioners and respondents 3 & 4 are *dominus litus* and they cannot be forced to fight a person they have no cause of

action against.

17.The learned Subordinate Judge, Poonamalle has allowed the application on the premise that since there was an agreement in favour of the third party by the general power of attorney and also some advances of money have been said to be made by the agreement holder, he has to be impleaded in the suit.

18.As stated supra, at the risk of reputation, for the sake of clarity, it is to be stated that originally the suit in O.S.No. 137 of 2010 is challenging the cancellation of the general power of attorney given by the owner in favour of the power agent for the said suit property and the said suit was decreed by recording the joint compromise, whereby, certain sales effected by the power agent has been approved and acknowledged by the land owner, the above fact also assumes significance. Thereafter, it appears that the power agent has entered into an agreement of sale with the present third party. Subsequently, the present suit in O.S.No.85 of 2011 has been filed challenging the compromise decree made in O.S.No. 137 of 2020. Now, the agreement holder seeks to get himself impleaded in the main suit on the ground that he holds some

agreement to purchase the subject matter of the suit property.

19.The only right based upon which the impleading application was filed is that an unregistered sale agreement was executed by the second respondent/first defendant in favour of the proposed party. In this context, it is pertinent to observe that a contract for sale of the immovable property is a contract that a sale of the said property was to take place on terms settled between the parties. It does not by itself create any interest in or charge over a such property.

20.As per Section 54 of the Transfer of Property Act, the contract for sale of immovable property does not create any interest over such property. Hence, based upon the sale agreement executed in favour of the proposed party, proposed party cannot claim any right or title in the suit property. The only remedy available to the proposed party is to enforce the contract between himself and the second respondent/first defendant.

21.It is not the case of the proposed party that he was a party to the contract in dispute in the present case. Hence, in order to

determine the dispute on hand, the proposed party is neither a necessary party nor a proper party to the proceedings.

22.Hence, taking into consideration of the lis involved between the parties in O.S.No.137 of 2010, the subject matter of the dispute between the parties in O.S.No. 85 of 2011 and plea of the proposed party in the present application in I.A.No.736 of 2015, this Court find that in this case I.A has been filed under Order 1 Rule 10 of C.P.C to add the petitioner as a proposed party both in the Interlocutory Application and the main suit is rest on the strengthen of the agreement of sale, alleged said to have been executed by the defendant in the main suit. As per Section 54 of the Transfer of Property Act, the agreement does not create any interest in or charge over the schedule of the property.

23.Hence, this Court finds that for adjudication of the lis between the present plaintiffs and the defendant, the proposed party is neither a necessary party nor a proper party to the proceedings. Accordingly, the reason assigned by the Trial Court is not sustainable in law and hence, the same is hereby set aside.

RMT.TEEKAA RAMAN. J.

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24.In view of the above, this Civil Revision Petition stands allowed and the order passed in I.A.No.736 of 2015, dated 25.01.2019, is hereby set aside and it is open to the first respondent to file appropriate application for appropriate relief before the appropriate Court. No costs. Consequently, connected miscellaneous petition stands closed.

22.01.2021

Index : Yes
Internet : Yes
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To

The Subordinate Judge, Poonamalle.

Pre-Delivery Judgment

in

C.R.P.(PD).No.1087 of 2019 and
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