

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.7.2021.

Delivered on : 29.7.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD) No.1740 of 2016
and
C.M.P.Nos.9244 and 13845 of 2016

Jayasundari

Petitioner

vs.

1. Sathiya
2. Moganambigai

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 26.2.2016 passed in I.A.No.1991 of 2015 in O.S.No.111 of 2013 on the file of the Principal District Judge, Puducherry.

For Petitioner : Mr.T.R.Rajaraman for
Mr.V.Sairam

For R1 : Mr.C.A.Diwakar

ORDER

The revision has been filed by a third party against the order of the Trial Court dismissing the petition filed by her under Order I Rule 10(2) of CPC to implead herself as one of the defendants in O.S.No.111 of 2013.

2. The suit in O.S. No.111 of 2013 had been filed by the first respondent/plaintiff against the second respondent/defendant for specific performance pursuant to the agreement of sale dated 6.12.2010 and to direct the second respondent defendant to execute the sale deed after receiving the balance sale consideration failing which the court to execute the sale deed in favour of the first respondent/plaintiff and for other reliefs.

3. In the plaint, the first respondent/plaintiff had contended that there had been an agreement of sale dated 6.12.2010 between her and the second respondent/defendant and since the second respondent/defendant had not come forward to execute the sale deed in terms of the said agreement of sale, the suit has been filed.

4. The second respondent/defendant had entered appearance and also filed her written statement specifically denying the agreement of sale and various other defenses and allegations were also taken in the written statement.

5. Whiles, the revision petitioner/third party had filed an Application in I.A.No.1991 of 2015 under Order I Rule 10(2) of CPC to implead herself as one of the defendants in O.S.No. 111 of 2013. In the affidavit filed in support of the petition, she had stated that on

1.8.2008, the husband of the second respondent/defendant had borrowed a sum of Rs.5 lakhs from her son-in-law one Subramani son of Manathan in order to enable him to meet the educational expenses of his daughter and subsequently, on 5.4.2009, another sum of Rs.5 lakhs was taken by him for purchasing resin and other materials from Mumbai for boat manufacturing and yet another sum of Rs.5 lakhs was taken by him on 4.5.2009 to meet the educational expenses of his daughter. The husband of the second respondent/defendant also issued a cheque towards the repayment of the loan, however, when the cheque was presented for collection, it had bounced and that a criminal case was filed before the Judicial Magistrate II, Puducherry and during the trial, the husband of the respondent/defendant had come forward to settle the amount and the criminal court had had granted time for settlement. Whiles, the second respondent/defendant had chosen to sell the schedule mentioned property with the building in her favor after deducting a sum of Rs.14 lakhs due to her son in law and she had paid the remaining amount to the second respondent/ defendant and the sale deed had been executed in her favor and that it was also presented for admittance for registration along with certified copies of sale deeds.

While the revision petitioner was taking steps to get the sale registered, the Sub Registrar had refused to register the sale deed by stating that one Tmt.Sathiya wife of Ramamurthy submitted a protest petition on 30.11.2012 that the original sale deed No.5640 of 2003 dated 8.12.2003 is under her custody. The revision petitioner, aggrieved against the order of the Sub Registrar refusing to register the sale deed, had filed an Appeal before the District Registrar and the same is pending. The revision petitioner, being a subsequent purchaser, had filed a petition seeking to implead her as third party defendant in the suit.

6. The first respondent/plaintiff had filed a counter stating that since the sale deed was not registered, no title or right has passed in favor of the petitioner by virtue of Section 54 of the Transfer of Property Act and that the unregistered agreement of sale is not admissible in evidence to prove the averments of the affidavit and that she is not a necessary party. It had been further stated that the petitioner/third party had not obtained any permission from the court under Section 52 of the Transfer of Property Act to purchase the suit property and that since the petitioner has no right or interest in the property, she had prayed for dismissal of the petition. It was further

contended that the petition is filed with ulterior motive of protracting the case and that it was filed with inordinate delay after the chief examination of the first respondent/plaintiff was over.

7. The Trial Court, finding that the sale deed was not registered and that the second respondent/defendant had already filed I.A.No.1583 of 2014 seeking to implead the present petitioner as a defendant in the suit and it had been dismissed and the revision filed against the said order was also dismissed by this court and further finding that the scope of trial in O.S.No.111 of 2013 is whether the agreement of sale between the 1st and 2nd respondent is to be enforced or not and if a third party is to be impleaded, then the entire issue gets very complicated and the enforceability of the agreement of sale would be pushed out of focus and the scope of the suit would get far expanded and be converted into a suit for title, had dismissed the Application against which, the present civil revision petition has been filed.

8. Mr.T.R.Rajaraman, learned counsel appearing for the revision petitioner/third party would submit that the suit for specific performance by the respondent/plaintiff was filed on 23.9.2013, whileso, even before filing of the suit, the second

respondent/defendant had chosen to sell the suit property to the revision petitioner on 27.8.2013, the consideration was paid and the sale deed was presented for registration and the formalities for registration were also complied with and at that stage only, on the protest application given by the first respondent/plaintiff, the Sub Registrar refused to register the sale deed and therefore, for all practical purposes, the sale stands completed and thereby the subsequent purchaser of the property viz., the revision petitioner/third party has to be impleaded as a proper and necessary party to the suit for effective and speedy redressal of the dispute among the parties. He would further submit that the petitioner satisfies the test under Order I Rule 10(2) to fall within the category of a necessary party. He would submit that in order to fall within the definition of necessary party, the petitioner has to satisfy that there must be a right to some relief against him in respect of controversies involved in the proceedings and that no effective decree can be passed in his absence and the petitioner herein, being a subsequent purchaser of the property, has a right over the suit property and that no effective decree can be passed in her absence. In support of his contention he relied upon the decision in *Kasturi v. Iyyamperumal and others (2005)*

6 SCC 733. He would further submit that the petitioner being subsequent purchaser of the suit property, is entitled to be impleaded. In support of his contention, he relied upon the decision in *Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar & others* (2016 (6) CTC 765). Therefore, he would pray for setting aside of the order passed by the Trial Court dismissing the petition filed by her seeking for her impleadment in the suit.

9. Per contra, Mr.C.A.Diwakar, learned counsel appearing for the first respondent/plaintiff would submit that the fact remains that the plaintiff and the defendant had entered into an agreement of sale on 6.12.2010 and the plaintiff had paid an advance of Rs.8,00,000/- and the entire original documents of the first item of the schedule mentioned property was handed over by the defendant to the plaintiff, but, since the defendant did not come forward to execute the sale deed, the respondent/plaintiff had issued a legal notice to the first defendant demanding execution of the sale deed on 11.6.2011 for which the defendant had issued reply on 14.7.2011 denying the execution of the agreement of sale and in the meanwhile, the plaintiff had issued notice to the Sub Registrar on 30.11.2012 putting him on notice that she is an agreement holder in possession of the original

sale deed and therefore, he may not register any sale deed in respect of the suit property. The learned counsel would further submit that after nine months therefrom, viz., on 27.8.2013, the defendant had presented a sale deed in respect of the proposed party for registration using certified copies of the parent documents and since the defendant was making attempts to sell the property, the first respondent/plaintiff filed a suit in O.S.No.111 of 2013 on 23.9.2013. He would also bring to the notice of this court that the Trial Court after hearing both sides, had passed the order of status quo till the disposal of the suit and whileso, the second respondent/ defendant earlier filed an Application in I.A.No.1583 of 2014 seeking to implead the present petitioner and one M/s.Puma Marine represented by its Partners as defendants in O.S.No.111 of 2013 based on the very same allegations wherein the present petitioner was shown as second respondent and the Trial Court, by order dated 3.2.2015 had dismissed the said Application holding that there is absolutely no material to hold that the parties sought to be impleaded are not necessary and proper parties to this suit and that even if the proposed parties are impleaded, the nature of the suit will be converted into a suit other than a specific performance suit and against the dismissal of I.A.No.1583 of 2014, the second

respondent/defendant filed C.R.P.No.1379 of 2015 and this court, by order dated 6.4.2015 dismissed the C.R.P. holding that there was no error or irregularity in the order passed in I.A.No.1583 of 2014 and now only in order to delay the trial, that petition to implead had been filed.

10. The learned counsel for the first respondent/plaintiff would further submit that the Trial Court, rightly finding that the suit was one for specific performance and in the event of impleading the petitioner, the scope of the suit will be widened and that it will be converted into a title suit, has dismissed the same. He further submitted that the plaintiff is the *dominus litis* and she cannot be forced to add parties against whom, she does not want to fight, unless there is a compulsion of rule of law. He would also submit that the decision relied on by the petitioner in *Kasturi v. Iyyamperumal and others* (2005) 6 SCC 733, and *Robin Ramjibhai Patel v. Anandibai Rama @ Rajaram Pawar & others* (2016 (6) CTC 765) deal with Applications/Petitions filed by the plaintiff to implead the parties and therefore, those decisions, will not be applicable to the facts of the present case. He would further submit that the petitioner is claiming independent title adverse to the claim of the first respondent/plaintiff and he, being a third party, cannot be

added so as to convert the suit for specific performance into a suit for title. He would further submit that it is the prerogative of the plaintiff as *dominus litis* to implead the persons. In support of his contention, he relied on the decision in *Gurmit Singh Bhatia v. Kiran Kant Robinson & others* ((2020) 13 SCC 773).

11. Heard the learned counsel appearing for the parties and perused the materials available on record.

12. The revision is directed against the dismissal of the petition filed under Order I Rule 10(2) CPC. The question to be decided is not regarding the legality of the alleged sale deed, but, it is as to whether the revision petitioner is a necessary party to the suit.

13. To analyse the merits of the case, this court feels that it would be appropriate to quote the decision in *Gurmit Singh Bhatia v. Kiran Kant Robinson & others* wherein the Apex Court, referring to the Judgment relied on by the learned counsel for the petitioner in *Kasturi v. Iyyamperumal*, has held as under:-

"In the aforesaid decision in the case of Kasturi v. Iyyamperumal (2005) 6 SCC 733, it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent

title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. It is further observed and held that in a suit for specific performance of the contract to sell the lis between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other

parties have acquired any title and possession of the contracted property.

5.5. It is further observed and held by this Court in the aforesaid decision that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. The aforesaid observations are made by this Court considering the principle that plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law."

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14. On perusal of the entire factual aspects in the light of the above decision, this court is able to find that the revision petitioner,

being a third party, was attempted to be impleaded by the defendant in the earlier round of litigation and having failed in such an attempt, this petition is filed as a second round of litigation. Moreover, in the decision rendered in *Gurmit Singh Bhatia v. Kiran Kant Robinson & others (supra)*, the law is well settled that the plaintiff in a suit is a *dominus litis* and he has his own choice to implead a person against whom, he wants to make a claim and he cannot be forced to implead a person adverse to his claim unless there is a compulsion of the rule of law and therefore, it is the prerogative of the plaintiff to implead necessary parties of his chose. If he does not want to implead them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third party as party defendant in such suit. Further, as rightly held by the Trial Court, in the event of impleading the third party, the scope of the suit could be widened and detrimental to the plaintiff. Therefore, this court finds no infirmity in the order passed by the Trial Court.

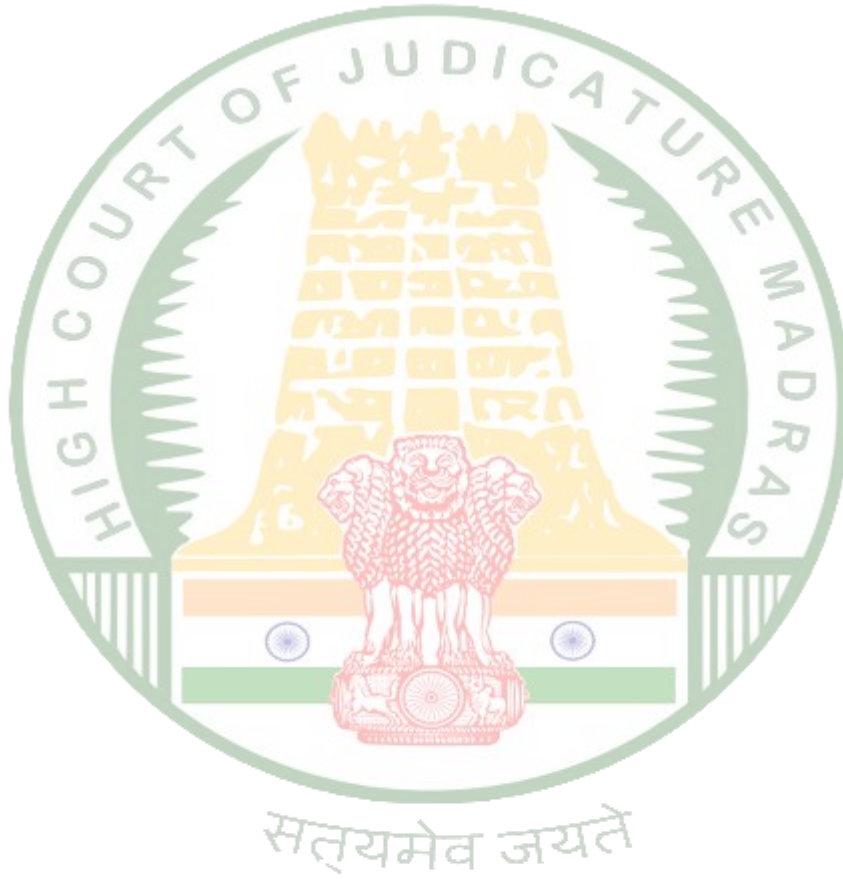
15. In view of the above, the civil revision petition is dismissed. No costs. The connected Miscellaneous petitions are closed.

29.7.2021.

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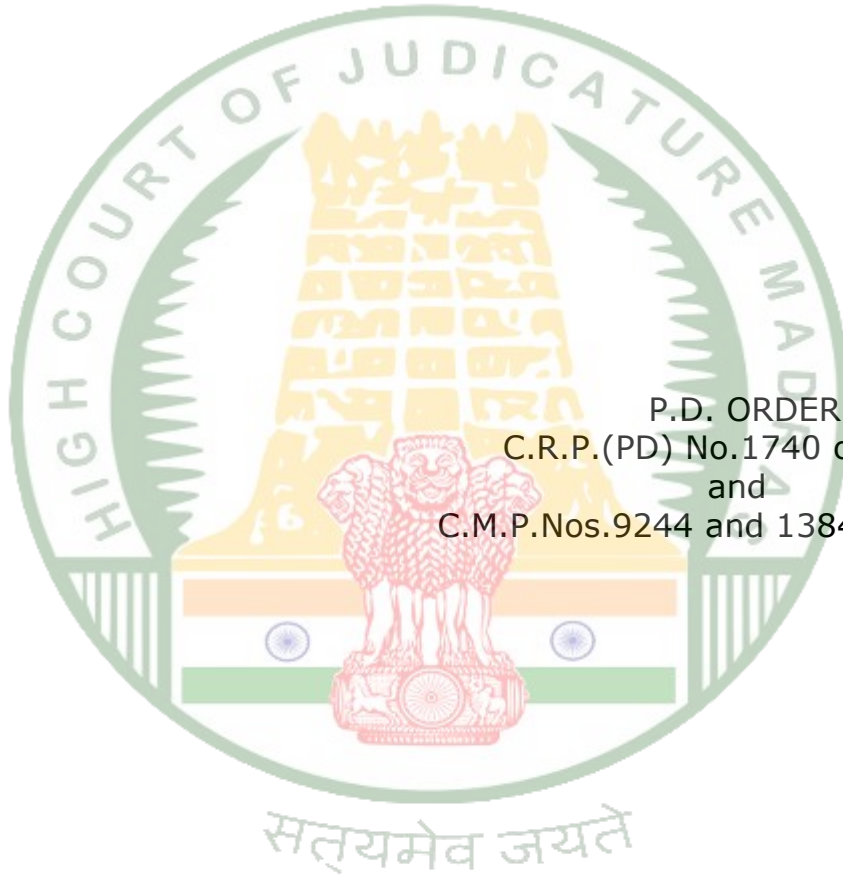
Principal District Judge,
Puducherry.



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A.D.JAGADISH CHANDIRA, J.

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