

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No. 3840 of 2016

and

CMP.No.19575 of 2016

G.Saravanan

... Petitioner

Vs.

1. Senthamarai

2. V.Nivetha

3. V.Rajarajeswari

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 19.01.2016 passed in I.A.No.100 of 2015 in O.S.No.3 of 2014 on the file of the learned 1st Additional Subordinate Judge, Salem.

For Petitioner

: Mr.B.Vijayakumar

For Respondents

: Mr.P.Jagadesan (for R1)

: Mr.N.Manoharan (for R2)

: Notice Served (for R3)

ORDER

This Civil Revision Petition is directed as against the order passed in I.A.No.100 of 2015 in O.S.No.3 of 2014 dated 19.01.2016 on the file of the learned 1st Additional Subordinate Judge, Salem, thereby, allowing the petition to implead the proposed party as one of the defendants.

2. The petitioner is the plaintiff and the second and third respondents are the defendants in the suit filed by the petitioner for specific performance on the strength of the agreement for sale dated 11.11.2009 in respect of the suit property. While pending the suit, the first respondent filed a petition to implead himself as a party to the suit filed by the petitioner herein for specific performance. The first respondent claimed that the suit property originally belonged to one Govindharajan by virtue of partition deed dated 07.05.1973. Thereafter, he died on 31.12.2012 and after his demise, the proposed party and other legal heirs are entitled to the suit property. Accordingly, the proposed party has 1/3rd share in the suit property and as such, he filed a suit for partition in O.S.No.121 of 2009 on the file of the Principal Sub Judge, Salem and the same was decreed and 1/3rd share in the suit property was allotted in favour of the first respondent herein. Aggrieved

by the same, the other legal heirs viz., the second and third respondents herein filed an appeal suit in A.S.No.27 of 2014 and the same was dismissed by the judgment and decree dated 14.11.2014 on the file of the III Additional District Judge, Salem. Though, they filed Second Appeal before this Court in S.A.No.828 of 2015 and it is pending, the first respondent is necessary and proper party to the suit filed by the petitioner herein and filed a petition to implead himself as a party to the suit.

3. The learned counsel for the petitioner submitted that the suit for specific performance was filed in pursuant to the agreement for sale entered between the petitioner and the second and third respondents herein. The first respondent is absolutely not a proper or necessary party in the suit for specific performance. In support of his contentions, he relied upon the judgment reported in CDJ 2005 SC 511 (*Kasturi -vs- Iyyamperumal & others*), wherein the Hon'ble Supreme Court of India held as follows:-

“ Code of Civil Procedure, 1908 - Order I Rule 10 - Specific Performance of Agreement for Sale – Impleading Third Party – Whether in a suit for specific performance of contract for sale of a property instituted by a purchaser

against the vendor, a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property, is entitled to be added as a party/defendant in the said suit? - Held - It is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person – The stranger to the contract, namely the respondent Nos.1 and 4 to 11 making claim independent and adverse to the title of respondent Nos.2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party defendants in the suit for specific performance of contract of sale.”

4. Per contra, the learned counsel for the first respondent submitted that the first respondent filed a suit in O.S.No.121 of 2009 for partition, in which he was declared 1/3rd share in the suit property. Though the second and third respondents filed a Second Appeal in S.A.No.828 of 2015 as against the judgment and decree in A.S.No.27 of 2014, he is a proper and

necessary party to the suit filed by the petitioner herein for specific performance in respect of the very same property. In support of his contentions, he relied upon the judgment reported in 2014 Law Suit (SC) 1054 (**Baluram -vs- P.Chellathangam & others**), wherein the Hon'ble Supreme Court of India held as follows:-

“14.....

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or property party.

15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a

necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a property party to the suit for specific performance.

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19. Referring to suits for specific performance, this Court in Kasturi, 2005 6 SCC 733, held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the

contract, but a person who claims a tittle adverse to that of the defendant vendor will not be a necessary party.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”

5. The Hon'ble Supreme Court of India also cited the judgment reported in CDJ 2005 SC 511 (**Kasturi -vs- Iyyamperumal & others**), which is relied upon by the learned counsel for the petitioner herein and

held that the discretion under sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The Court can strike out any party who is improperly joined. The Court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the Court deems fit to impose.

6. In the case on hand, the first respondent is also one of the legal heirs of the deceased father/Govindharajan and the second and third respondents are also the legal heirs of the said deceased/Govindharajan. In pursuant to the settlement deed executed in favour of the second and third respondents herein, they entered into an agreement for sale with the petitioner herein. In pursuant to the said agreement, the petitioner filed a suit for specific performance. In the meanwhile, the first respondent filed a suit for partition in O.S.No.121 of 2009 and the same was decreed in favour of the first respondent by allotting 1/3rd share in the suit schedule property and it was also confirmed by the First Appellate Court and aggrieved by the same, the Second Appeal is pending before this Court in S.A.No.828 of

2015. Therefore, the first respondent is not a stranger to the suit property and he is a proper and necessary party to dispose of the suit for specific performance. Therefore, this Court finds no irregularity or infirmity in the order passed by the Court below.

7. Accordingly, this Civil Revision Petition is dismissed. However, the suit is of the year 2014, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The 1st Additional Subordinate Judge, Salem.



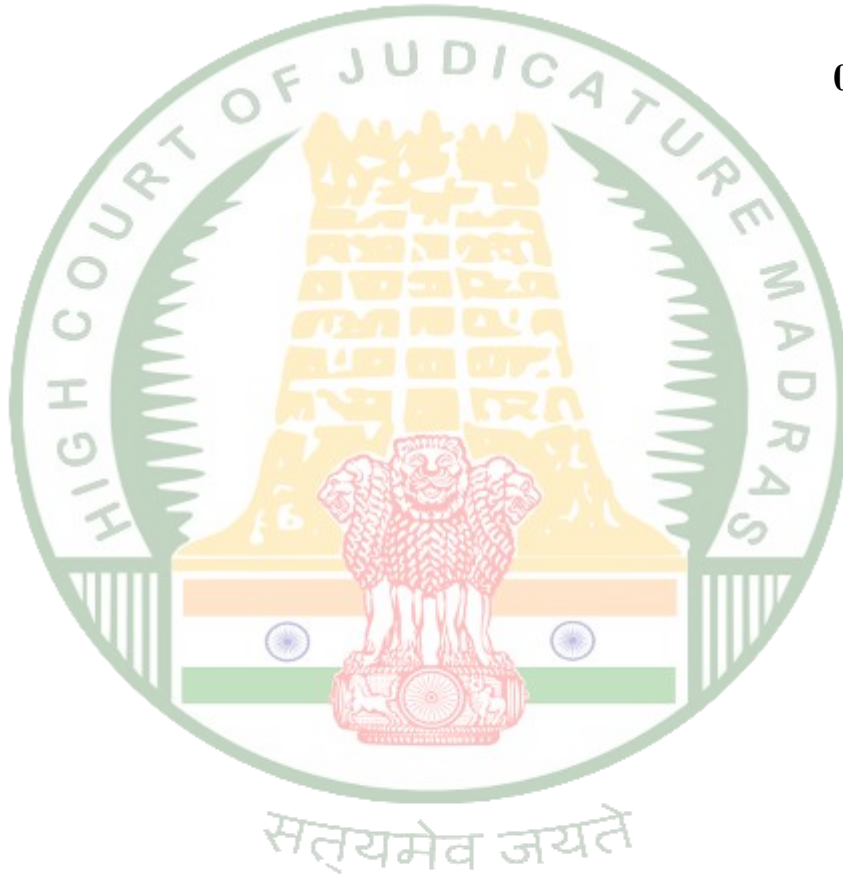
G.K.ILANTHIRAIYAN,J.

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