



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRP (PD) (MD) .No.1001 of 2021 and

CMP (MD) .No.5709 of 2021

WEB COPY

Sagunthala Ramanujam

...Petitioner

Vs.

1.Maruthupandiyan

2.Chinnasamy

3.Thiyagarajan

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.250 of 2019 in O.S.No. 67 of 2019 dated 23.02.2021 on the file of the Principal District Judge, Dindigul.

For petitioner : Mr. S. Chellapandian

For Respondents : Mr. V. Ramakrishnan

1 & 2

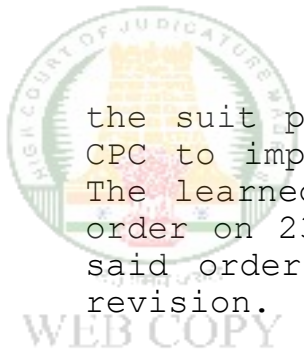
O R D E R

The civil revision is directed against the order passed in I.A.No.250 of 2019 in O.S.No. 67 of 2019 dated 23.02.2021 on the file of the Principal District Court, Dindigul, dismissing the petition filed under Order 1 Rule 10(2) CPC.

2. When the above matter was moved for admission on 19.07.2021, I have heard the learned counsel for petitioner and the learned counsel for caveator / respondents 1 and 2.

3. When this Court is about to dictate the orders, the learned counsel for the revision petitioner would submit that he has to submit the citations in response to the contentions raised by the caveator and sought further time and hence, the matter stands adjourned to today under the caption for orders. Today, the learned counsel for the revision petitioner has neither submitted any citations nor turned up.

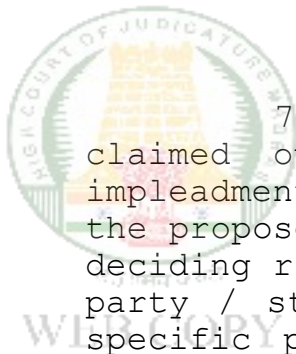
4. The revision petitioner is a third party and the respondents 1 and 2 have filed the above suit in O.S.No.67 of 2019 against the third respondent claiming the relief of specific performance of agreement dated 27.12.2017 and for permanent injunction restraining the defendant and his men from in any way creating encumbrances or alienating the suit properties. Pending suit, the revision petitioner / 3rd party claiming to be the owner of



the suit property has filed the petition under Order 1 Rule 10(2) CPC to implead herself as the second defendant in the above suit. The learned District Judge, after enquiry, has passed the impugned order on 23.02.2021 dismissing the said petition. Aggrieved by the said order, the proposed party has come forward with the present revision.

5. The case of the revision petitioner is that the suit properties and other properties were originally owned by her grand father Muthu Ramalingam, that after his death his two sons Maruthamuthu, father of proposed party and Nagarathinam, son of the third respondent have become the owners of the suit property, that both of them have subsequently partitioned the properties orally and the properties situated at Palani Taluk were allotted to the share of Nagarathinam and the properties available in Natham Taluk including the suit property were allotted to the petitioner's father, that after the death of petitioner's father Maruthamuthu her mother became owner and she was in possession and enjoyment of the suit property, that the petitioner's mother Sarathambal had executed a gift settlement deed on 09.08.2007 settling the suit property in favour of the revision petitioner and that the petitioner alone is the owner and in possession and enjoyment of the suit property. It is further case of the revision petitioner that the third respondent by suppressing the oral partition effected between his father and petitioner's father has filed the suit in O.S.No.27 of 2011 for partition and the suit was decreed in his favour, that the petitioner has preferred the appeal and the same is pending on the file of the Principal District Court, Dindigul, that the third respondent by suppressing the above has entered into a sale agreement with the respondents 1 and 2 with an intention to grab the suit properties and that since the respondents colluded together and attempting to cheat the petitioner and hence, she was constrained to file the above petition to implead herself as a defendant in the suit. The third respondent has taken a stand that the settlement deed alleged to have been executed by the petitioner's mother is not binding on him, that the proposed party is not a necessary party and that therefore, the impleading petition is liable to be dismissed. The respondents 1 and 2 / plaintiffs have also taken a similar stand that the proposed party is a total stranger and there is no need or necessity to implead her as a party in the suit, that the petitioner is not at all necessary party nor a proper party and that the above petition has been filed abusing the process of the Court.

6. Admittedly, the respondents 1 and 2 / plaintiffs have entered into a sale agreement with the third respondent / defendant to purchase the suit property. The plaintiffs by alleging that the defendant has not chosen to perform his part of contract, they were forced to file the above suit claiming the relief of specific performance and for permanent injunction restraining the alienation.



7. As already pointed out, the proposed party has also claimed ownership over the suit property and sought for her impleadment. Admittedly, there is no privity of contract between the proposed party and the respondents. It is settled law that the deciding right, title and interest in the suit property of the third party / stranger to the contract is beyond the scope of suit for specific performance of the contract and that the third party / stranger to the contract cannot be impleaded so as to convert the simple suit for specific performance in to regular title suit. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court relied on by the learned counsel for the caveator.

i) AIR 2005 SC 2813 (Kasthuri Vs. Iyyamperumal and others)

"6. In our view, a bare reading of this provision namely, second part of Order 1, Rule 10, sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

18. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and the respondent Nos.2 and 3 shall only be gone into and it is also not open to the Court to decide whether the respondent Nos.1 and 4 to 11 have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against respondent Nos.2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of the respondent Nos.1 and 4 to 11 relating to the contracted property.

21. For the reasons aforesaid, in our view, 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 for sale. "

ii) AIR 2019 SCC 3577 (Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others)

"6. Therefore, considering the decision of this Court in the case of Kasturi (supra), the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of contract between the original plaintiffs and original defendant No.1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs."

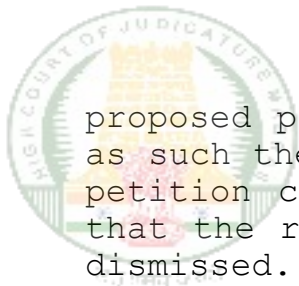
iii) 2010(3) LW 67 (Krishnan Vs. P. Palanisamy and four others)

"10. In a suit for specific performance of a contract for sale a third party to the agreement is not entitled to get impleaded, as such impleadment would enlarge the scope of the suit. The lis between the parties to the agreement can only be gone into and it would not be open to the trial Court to decide whether a third party had acquired any title or possession of the suit property, as such an issue would not be germane to a decision in the suit for specific performance of a contract for sale.

...

Impleadment of a third party cannot be allowed to change the character or the nature of the suit filed for specific performance of an agreement for sale. When the plaintiff in the suit for specific performance of the agreement for sale is the 'dominus litus' he cannot be forced to add parties, against whom he does not seek any relief, unless it is a compulsion of the rule of law."

8. Considering the above, the position of law is well settled that the third party / stranger to the contract cannot be considered as a necessary party nor as a proper party in a suit for specific performance and in case if the third party is allowed to be impleaded, then the scope of suit for specific performance itself would be enlarged and the same would be converted into a regular title deed. Applying the legal dictum laid down by the Hon'ble Supreme court, this Court has no hesitation to hold that the



proposed party is neither a necessary party nor a proper party and as such the decision of the trial Court in dismissing the impleading petition cannot be found fault with. Consequently, this concludes that the revision is devoid of merits and the same is liable to be dismissed.

WEB COPY

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TRP

To

The the Principal District Judge, Dindigul.

+1 CC to M/s.V.RAMAKRISHNAN, Advocate(SR-23843[F] dated 26/07/2021)

CRP(PD) (MD) .No.1001 of 2021 and
CMP(MD) .No.5709 of 2021
22.07.2021

MJ(CO)

LR (05.08.2021) 5P 3C