



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P(MD)No.958 of 2020

and

C.M.P(MD) No.6232 of 2020

C.Cheraiselvan ... Petitioner/Petitioner/Respondent

Vs.

1.V.M.D.Kathiravan ... 1st Respondent/Respondent/Respondent

2.C.Veeraganesan ... 2nd Respondent/Respondent/Proposed Party

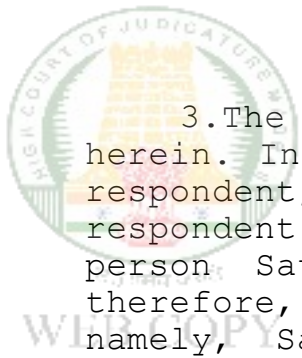
PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.08.2020 passed in I.A.No.824 of 2019 in A.S.No.38 of 2019 on the file of IV Additional District Court, Madurai.

For Petitioner : Mr.D.Baskar

ORDER

The revision petitioner is the appellant in A.S.No.38 of 2019 and the plaintiff before the trial Court in O.S.No.189 of 2014. The suit in O.S.No.189 of 2014 was filed by the petitioner herein for recovery of a sum of Rs.8,44,900/- with subsequent interest at 6% per annum on Rs.7,00,000/- from the date of plaint till the date of realization against the first respondent herein.

2.The cause of action for institution of the above suit was certain financial transactions between the petitioner and the first respondent and the proposed respondent Veeraganesan in respect of the auction purchase of the property, which was brought to sale by the Deputy Registrar of Co-operative Society, Madurai. In fact, the three of them had entered into partnership agreement on 16.07.2010. The petitioner would submit that the balance consideration was paid by the three of them and the sale certificate was registered on 16.09.2010. However, the original sale certificate and other receipts were not handed over to the plaintiff. The plaintiff demanded the partition of the property in view of the attitude of the respondents herein. It appears that the first respondent had sold 2 acre 86 cents from the property to one Sahaselvaraj without informing the plaintiff and on applying for encumbrance certificate, he came to learn that he had been cheated by the respondent herein. This has led to the filing of the suit.



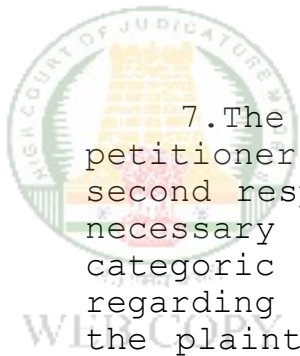
3.The suit was only instituted against the first respondent herein. In the written statement that has been filed by the first respondent, apart from raising the defences on merits, the first respondent had also stated that besides Veeraganesan, another person Sathasivam was also a party to this transaction and therefore, the suit is bad for non-joinder of necessary parties, namely, Sathasivam and Veeraganesan.

4.In the reply statement, the plaintiff had taken a stand that the Veeraganesan and Sathasivam were neither necessary nor proper parties to the suit. The catagoric pleadings to this effect has been taken in paragraph No.6. Thereafter, the suit in O.S.No.189 of 2014 was taken up for trial by the learned Third Additional Subordinate Judge, Madurai. The additional issue framed in the suit was whether the suit was maintainable on account of non-joinder of necessary party. Ultimately, by judgment and decree, dated 14.08.2018, the suit was dismissed and the learned Third Additional Subordinate Judge, Madurai, had returned the finding in the additional issue that the suit was definitely bad for non-joinder of necessary parties. The plaintiff thereafter filed the appeal in A.S.No.38 of 2019. In the said appeal, he has taken out an application in I.A.No.824 of 2019 to implead the second respondent herein as the second defendant in the suit in O.S.No.189 of 2014. The reason for taking out this application has been set out in paragraph No.5 of the affidavit filed in support of the petition, wherein the petitioner had stated as follows:-

5. I further submit that since the lower Court came to the conclusion that the second respondent is a necessary party to suit, I have come forward with this application to implead the second respondent as 2nd defendant in the suit in order to get a binding adjudication in his presence as per the judgment of the lower Court.

5.The first respondent had filed a counter *inter alia* contending that despite the written statement filed by the first respondent that the second respondent herein and Sathasivam were necessary parties to the suit, the petitioner had not cared to implead them. On the contrary, in the reply statement, had stated that they were not necessary parties to the suit. The present application is only an attempt to fill up the lacuna, since the trial Court has held against the petitioner with reference to non-joinder of parties. The proposed respondent had also taken a similar stand. The learned Fourth Additional District Judge, Madurai, dismissed the said petition. Aggrieved by which, the petitioner has filed this civil revision petition.

6.Heard the learned counsel appearing on either side and perused the records.



7.The above narration of facts would clearly show that the petitioner had taken a definite stand that the presence of the second respondent was unnecessary in the suit as he is neither the necessary nor proper party. In the reply statement, such a categoric stand has been taken. Although an additional issue regarding non-joinder of parties, had been taken, even thereafter the plaintiff had not come forward to implead the parties. Now, after having lost in the trial Court on the ground of non-joinder of necessary parties, the appellant cannot be permitted to fill up the lacuna by taking out this application. That apart, the issue of limitation has also arisen. The petitioner, having confidently taken a stand that the said Veeraganesan is not a necessary party, cannot now turn around to implead the very same Veeraganesan, only on the ground that the trial Court has held against him with regard to the non-joinder of necessary party, namely, Veeraganesan.

8.In these circumstances, I do not find any reason to interfere with the order of the learned Fourth Additional District Judge, Madurai. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The IV Additional District Judge,
Madurai.

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