



C.R.P.(PD).No.1368 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1368 of 2013
and M.P.No.1 of 2013

Yuvaraj

.. Petitioner

Vs.

1.N.Eswaramoorthy

Chennimalai Gounder (Died)

2.P.Vijayakumar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 15.02.2013 made in I.A.No.777 of 2012 in O.S.No.68 of 2009 on the file of the Sub Court, Perundurai, Erode District.

For Petitioner : Mr.M.Karthik
for M/s.I.C.Vasudevan

For Respondents : No appearance



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ORDER

(The matter is heard through 'video conferencing')

This Civil Revision Petition is filed to set aside the fair and final order dated 15.02.2013 made in I.A.No.777 of 2012 in O.S.No.68 of 2009 on the file of the Sub Court, Perundurai, Erode District.

2.The petitioner is 3rd defendant in O.S.No.68 of 2009 on the file of the Principal Sub Court, Perundurai, Erode District. The 1st respondent filed the said suit against one Chennimalai Gounder and the 2nd respondent, for specific performance of agreement of sale dated 03.11.2005 or alternatively for re-fund of advance amount with interest and creating charge over the suit properties. The said Chennimalai Gounder filed written statement and denied execution of agreement of sale and stated that through his Power Agent, he sold the suit property to the petitioner on 17.02.2006. The 1st respondent filed application and impleaded the petitioner as 3rd defendant. The petitioner filed written statement. While so, the 1st defendant, Chennimalai Gounder died



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intestate. The 1st respondent herein filed I.A.No.777 of 2012 for amendment of the plaint to add the relief as mentioned in the petition as 12 (c) and to delete the word “1st defendant” and replace the same with the word “3rd defendant”. According to the 1st respondent, the 1st defendant died intestate, wife of the 1st defendant pre-deceased the 1st defendant, 1st defendant had no issues, the petitioner purchased the property while agreement of sale with 1st defendant is in force and hence, the present amendment is necessary and prayed for allowing the application.

3.The petitioner herein filed counter affidavit and admitted that he purchased the property on 17.02.2006 and stated that the 1st respondent filed suit against the 1st defendant. The 1st respondent failed to implead the legal heirs of the 1st defendant and suit itself abated against the 1st defendant. There is no privity of contract between the petitioner and 1st respondent and 1st respondent is not entitled to seek any relief against the petitioner. The amendment sought for will change the nature and character of the case and prayed for dismissal of the application.



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4.The learned Judge considering the averments in the affidavit and counter affidavit, allowed the application on payment of cost of Rs.1,000/- payable to the petitioner and 2nd respondent, by the 1st respondent.

5.Against the said order dated 15.02.2013 made in I.A.No.777 of 2012 in O.S.No.68 of 2009, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit and contended that by amendment, the 1st respondent is introducing a new case and amendment changes the character of the suit and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

7.Though notice has been served on the respondents 1 and 2 and their names are printed in the cause list, there is no representation for them either in person or through counsel.



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8. Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

9. From the materials on record, it is seen that according to the 1st respondent, when the agreement of sale dated 03.11.2005 was in force between himself and the 1st defendant, the 1st defendant sold the suit property through his Power Agent to the petitioner on 17.02.2006, after filing of the suit by the 1st respondent. The 1st respondent impleaded the petitioner as 3rd defendant. Pending suit, the 1st defendant died on 04.11.2007. According to the 1st respondent, the 1st defendant died issueless and his wife pre-deceased him. In view of the same, the 1st respondent sought the present amendment. According to the petitioner, the 1st respondent failed to implead the legal heirs of the deceased 1st defendant and suit abated against the 1st defendant. The petitioner did not furnish any details of the legal heirs of the deceased 1st defendant. It is further case of the petitioner that by amendment, the 1st respondent is introducing a new case. The said contention is without merits. Admittedly, the petitioner purchased the property from the 1st defendant.



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Due to death of the 1st defendant, the 1st respondent can claim relief only against the petitioner, who purchased the property pending suit. A reading of the amendment now sought for reveals that the 1st respondent is not introducing any new case. But, he is seeking modification of the relief, due to the death of the 1st defendant. The other contention of the petitioner that amendment sought for is barred by limitation can be decided only after considering the oral and documentary evidence let in by parties during trial. The learned Judge has considered the nature of relief sought for in the suit and in the present application and allowed the I.A. filed for amendment. There is no error in the order of the learned Judge warranting interference by this Court.

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

24.01.2022

Index :: Yes/No
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To

The Subordinate Judge,
Perundurai,
Erode District.



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V.M.VELUMANI, J.

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