

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2022

PRONOUNCED ON : 30.06.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

OSA.NO.256 OF 2020

Vellore Institute of Technology (VIT)
Rep. by its Trustee G.V.Selvam
No.54, Thennamaram Street,
Vellore, Vellore District.

... Appellant

Vs

1. B.V.Reddy Enterprises Private Limited
Represented by its Director, Mr.V.Dinesh Reddy
Having registered office at
No. 232, Kilpauk Garden Road
Kilpauk, Chennai 600 010.
2. S.Murali Mani
3. S.Balan Mani
4. Arjunlal Sunderdas
5. S.M.Lal
6. The Official Assignee
High Court, Madras
Representing the
Estate of Arjunlal Sunderdas (Insolvent)

... Respondents

PRAYER: Appeal filed under Order XXXL Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order and decreetal dated 09.07.2020 made in Appln. No. 8678 of 2018 in C.S.No. 285 of 2014.

A.No.8678 of 2018: Application praying that this Hon'ble Court be pleased to implead the applicant/third party as 6th Defendant in the above suit before this Hon'ble Court be granted.

For Appellant : Mr.R.Thiagarajan
for Mr.A.Saravanan

For 1st Respondent : Mr.T.V.Ramanujun
Senior Counsel for
Mr.B.Arvind Srevatsa

For 6th Respondent : Mr.K.V.Ananthakrishnan
Assisted by
Ms.A.Janani
for the Official Assignee

JUDGMENT

This Original Side Appeal has been filed by the applicant in A.No. 8678 of 2018 questioning dismissal of the said application by a learned Single Judge of this Court by order dated 09.07.2020. The said application in A.No. 8678 of 2018 had been filed in C.S.No. 285 of 2014 which is now pending before this Bench and listed for advancing arguments. The appellant is a third party to C.S.No. 285 of 2014 and had filed the said application in A.No. 8678 of 2018 under Order 1 Rule 10(2) of the Code of Civil Procedure seeking to be impleaded as the sixth defendant in the said suit.

C.S.No. 285 of 2014:

2. C.S.No. 285 of 2014 had been filed by the first respondent / B.V.Reddy Enterprises Private Limited against four defendants seeking specific performance directing the 1st and 2nd defendants to execute a registered sale deed through their power of attorney agents / 3rd and 4th defendants with respect to the property mentioned in the schedule to the plaint pursuant to an agreement of sale dated 13.12.2006 entered into by the 1st and 2nd defendants through their power of attorneys, 3rd and 4th defendants with the plaintiff and to deliver vacant possession of the said property and also for consequential injunction restraining alienation or altering of the physical features of the property and also for costs of the suit.

3. Since the 3rd defendant / power of attorney agent of the 1st and 2nd defendants had been declared as insolvent in I.P.No.25 of 2014 by order of Court dated 21.04.2014 and since in the Insolvency Petition it had been disclosed that the property which was the subject matter of the agreement also formed part of the estate of the insolvent, the Official Assignee had been impleaded as the 5th defendant by order dated 17.08.2015 in A.No. 4741 of 2015.

4. It is the contention of the plaintiff in C.S.No. 285 of 2014 that the suit schedule property at old Door No. 33, New Door No. 33, College Road, Nungambakkam, Chennai, measuring 5 grounds and 1077 sq.ft., originally belonged to one Mrs. T.R.Subbulakshmi and later she bequeathed the same to her two sons, S.Murali Mani, and S.Balan Mani, the 1st and 2nd defendants in the suit by Will dated 21.01.1997, for which Letters of an Administration had been granted by this Court in O.P.No. 496 of 2005 by order dated 17.01.2006. It had been claimed that S.Murali Mani and S.Balan Mani had entered into an agreement of sale in the said property in favour of Mr.Arjunlal Sunderdas, the 3rd defendant/insolvent. This agreement was dated 18./19.08.2006 and had been registered as Document No.857 of 2006 in the office of the Sub Registrar, Thousand Lights, Chennai. The total sale consideration was determined at Rs.4,08.65,624/-. It had been further claimed that the 3rd defendant/insolvent had paid a sum of Rs.2,50,000/- each to the 1st and 2nd defendants as advance by demand drafts and had agreed to pay the balance of Rs.2,01,82,812/- to each the 1st and 2nd defendants on or before 15.10.2006. A supplemental agreement dated 28.08.2006 had been entered into by the 1st and 2nd defendants with the 3rd defendant/ insolvent wherein the 1st and 2nd defendants both acknowledged receipt of the entire balance sale consideration of Rs.4,08,65,624/-. It was also covenanted in the said supplemental agreement that the 3rd defendant / insolvent had also been put in possession of the property and the title deeds of the property had also been handed over to him. They also agreed to execute a power of attorney to empower the 3rd defendant/insolvent and his brother/ nominee S.M.Lal the 4th defendant to either jointly or severally deal with the property. It had also been covenanted that the time fixed for registration of the sale deed will no longer be applicable and the sale deed will be executed as and when called upon by the purchasers / the 3rd defendant / insolvent.

5. It must also be mentioned that the 1st and 2nd defendants had also executed a registered power of attorney on the same date 28.08.2006, authorising the 3rd defendant/insolvent and his brother S.M.Lal, the 4th defendant to deal with the property including sell the property and register any sale deed.

6. It had been further claimed by the plaintiff that the 1st and 2nd defendants represented by their power of attorneys / 3rd and 4th defendants had then entered in to an agreement of sale with the plaintiff on 13.12.2006 to sell the same property for a total sale consideration of Rs.5/- Crores (Rupees five crores only). It had also been stated that the entire sale consideration has been paid by the plaintiff to the 3rd defendant/insolvent by cheque dated 13.12.2006.

7. A separate Memorandum of Understanding was also entered into by the 3rd defendant/insolvent with the plaintiff on 13.12.2006 to develop the said property and the 3rd defendant/insolvent consequently received a further sum of Rs.15 crores (Rupees fifteen crores only) by cheque dated 13.12.2006.

8. It had been further stated in the plaint that since there was no effective further progress, the 3rd defendant/insolvent and the plaintiff entered into a cancellation agreement on 23.02.2012 whereby the 3rd defendant was placed under an obligation to pay a sum of Rs.52,60,30,000/- as compensation for non performance of the agreement of sale/Memorandum of agreement. The 3rd defendant / insolvent also issued a cheque dated 13.06.2012 for a sum of Rs.52,60,30,000/-. However, it was requested that the said cheque should not be presented for payment. The 3rd defendant / insolvent then gave another cheque for Rs.56,93,75,000/- and when the said cheque was presented for payment, it was returned as dishonoured. The plaintiff therefore claimed that the cancellation agreement which was entered on the promise that the advance and the compensation being paid back by the 3rd defendant/insolvent, stood frustrated by the dishonour of the cheque and therefore, the plaintiff further claimed that the earlier agreement of sale by which the total sale consideration for the property determined at Rs.5/- crores had been paid by the plaintiff to the 3rd defendant/insolvent dated 13.12.2006 stood revived.

9. The plaintiff further stated that they had initiated appropriate proceedings under Negotiable Instrument Act for the offence relating to the dishonour of the cheque. They had also given a complaint against the 3rd defendant/insolvent before the Chief Metropolitan Magistrate Court at Egmore under Section 190 (1)(a) read with 200 of the Code of Criminal Procedure and subsequently, an First Information Report in Crime No. 15 of 2013 had also been registered against the 3rd defendant/insolvent on 22.01.2013 for offences under Sections 406,417, 420 of IPC. Thereafter, the 3rd defendant had executed a further agreement dated 05.04.2013 and agreed to pay a sum of Rs.62,50,00,000/- to the plaintiff in 14 separate instalments spread over of 13 months. However holding that the agreement dated 13.12.2006 with respect to the suit schedule property had not been performed by the 3rd defendant as agreed, the suit had been laid seeking specific performance and consequential reliefs as stated aforesaid.

10. In the said suit, the 5th defendant/ Official Assignee had also filed written statement. Subsequently, the parties had been invited to adduce evidence and we are informed that the evidence had been recorded and the suit is now ripe for arguments to be addressed.

C.S.No. 317 of 2014:

11. Meanwhile, after the cancellation of the sale agreement on 23.02.2012, and before the dishonour of cheque for Rs.52,60,30,000/- as compensation towards non-performance of the agreement of sale, Arjunlal Sunderdas /the 3rd defendant/insolvent acting as power of attorney of S.Murali Mani and S.Balan Mani, is alleged to have entered into an agreement of sale on 05.11.2012 with Vellore Institute of Technology/VIT, Represented by its Trustee G.V.Selvam, the applicant in A.No. 8678 of 2018 / appellant herein with respect to the very same property for total sale consideration of Rs.21/- Crores. This agreement also covenanted that the entire sale consideration had been paid by the appellant herein by cheques on various dates and it also mentioned that the 3rd defendant would clear all encumbrances over the property and execute a sale deed within a period of 18 months in favour of the appellant herein.

12. Since the 3rd defendant had not performed his part of the agreement, the appellant herein filed C.S.No. 317 of 2014 seeking specific performance of the agreement of sale dated 05.11.2012 or in the alternate for a direction to refund the sum of Rs.21/- Crores received towards the sale consideration. The said suit was instituted against the insolvent Arjunlal Sunderdas, who was shown as the 1st defendant and against the owners of the property, S.Murali Mani and S.Balan Mani, who were shown as the 2nd and 3rd defendants.

13. We are informed that the Official Assignee had also been implead as a defendant since the 1st defendant/ Arjunlal Sunderdas had been declared as insolvent. However written statement is yet to be filed by the Official Assignee in the said suit.

14. In the plaint in C.S.No. 317 of 2014, it had been stated that the appellant herein had originally entered into an agreement of sale with the 1st defendant/insolvent on 27.11.2007 to purchase properties in the vicinity of Bangalore City in Shetterahalli Village, Kesba Hobli, Devanahalli Taluk, Bangalore, measuring around 105 acres for a total consideration of Rs.47,25,00,000/-. It had been further stated that the plaintiff / appellant had paid as advance sum of Rs.32/- crores by 06.11.2008 out of the total sale consideration. It was then found that the 1st defendant/insolvent did not have proper title over the properties and that the properties were also entangled in various litigations. Therefore, the 1st defendant/insolvent came forward to return the amount paid, namely, Rs.32/- crores. However, the 1st defendant/insolvent had returned only Rs.11/- crores. The balance Rs.21/- crores was unpaid.

15. In the plaint, the details of the amounts paid by the plaintiff and the amounts returned by the insolvent are given. Thereafter, it had been stated that the 1st defendant/insolvent had come forward to settle the outstanding dues by selling the schedule mentioned property namely land and building at No.33, College Road, Nungambakkam, Chennai, to the plaintiff/appellant herein. It was stated that the 1st defendant/insolvent also promised to sell other properties also in addition to the schedule mentioned property. One such property was at No.34, College Road, Nungambakkam, Chennai and measuring 8 grounds. The 1st defendant/insolvent had also agreed to permit the plaintiff/appellant herein to promote a property at Subba Rao Avenue, Nungambakkam. It was stated that these offers were in lieu of and to set off the outstanding amount of Rs.21/- Crores.

16. It had been further stated that the 1st defendant/insolvent also handed over photocopies of the title deeds of various properties which he promised to sell to the plaintiff/appellant herein. It was claimed that under these circumstances the 1st defendant/insolvent acting as power of attorney agent of the 2nd and 3rd defendants, the actual owners of the property had entered into an agreement of sale dated 05.11.2012 with respect to the suit schedule property. The 1st defendant/insolvent had also held out that there were no encumbrances over the said property. Claiming that the 1st defendant / insolvent did not come forward to execute the sale deed as agreed, the suit was filed for specific performance.

A.No. 8678 of 2018 in C.S.No. 285 of 2014:

17. The plaintiff in C.S.No. 317 of 2014, who is the appellant herein then filed A.No. 8678 of 2018 in C.S.No. 285 of 2014 under Order 1 Rule 10(2) CPC to be impleaded as a further defendants in the suit.

18. In the said application to implead, it had been contended by Vellore Institute of Technology/VIT that they had entered into an agreement of sale with the 3rd defendant / insolvent relating to the very same suit property for valuable consideration of Rs.21/- Cores and that therefore, they have a direct and substantial interest in the subject matter of the suit. It had also been stated that if the appellant is not made a party, they not would be in a position to know the status of the suit and whether there was any collusion among the parties to the suit. It was therefore contended that the appellant should be made a party to the suit as otherwise they would be seriously prejudiced. It was contended that the appellant was both a necessary and proper party to the suit.

19. This application was contested by the plaintiff, B.V.Reddy Enterprises Private Ltd.,/BVR and also by the 5th defendant/Official Assignee.

20. In the counter affidavit filed by the plaintiff, BVR, it had been stated that evidence had been adduced and all witness had been cross examined and that the suit is in the list for advancing arguments. It was also stated that the appellant herein was a third party to the agreement entered into between the plaintiff and the other defendants and that therefore, the appellant has no locus standi to intervene in the said suit. It was further contended that the plaintiff, as dominous litus has a right to choose the defendants against whom the lis should be instituted. It was also stated that the appellant has no legal right to seek to be impleaded in the said suit.

21. The Official Assignee in his counter affidavit stated that the suit for specific performance will have to be decided in accordance with the agreement entered into between the parties and the primary issue would only be whether to the said agreement is to be upheld or not. It had been stated that the appellant had entered into a separate agreement with respect to the same property and that agreement will have to be proved by the appellant herein, who also has to make out a case for grant of specific performance. It had been contended that the appellant is not a necessary and property to the suit. He was a third party to the agreement and he can never speak about the terms and surrounding circumstances of the agreement. It was therefore contended that the application should be dismissed.

22. The said application came up for consideration before a learned Single Judge of this Court, who by order dated 09.07.2020 dismissed the said application holding that the appellant herein was neither a necessary party or proper party. It was also stated that as a stranger to the agreement, he can never speak about the terms and surrounding circumstances of the agreement. It was also stated that the appellant was another agreement holder and that would not grant any specific right, title or interest to the appellant over the suit property. It was observed that the appellant does not have title over the suit property and therefore cannot claim to have substantial interest of the suit property. It was therefore held that the presence of the appellant was not required for effective and complete adjudication of the issues raised in the suit in C.S.No. 285 of 2014 and that the appellant was not a necessary party and therefore was not required to be impleaded as the defendant.

The Arguments: OSA No. 256 of 2020:

23. Questioning such order, the appellant had filed the present Original Suit Appeal. This appeal has been directed to be listed before this Special Bench by the Hon'ble Chief Justice by note order dated 13.05.2021.

24. Heard Mr. R.Thiagarajan, learned counsel for Mr.A.Saravanan, for Vellore Institute of Technology/VIT, the appellant/applicant in A.No. 8678 of 2018/VIT, Mr.T.V.Ramanujun, learned Senior Counsel for Mr.B.Arvind Srevatsa, learned counsel for B V Reddy Enterprises Pvt. Ltd., / BVR the 1st respondent/plaintiff in C.S.No. 285 of 2014 and Mr.K.V.Ananthakrushnan, assisted by Ms.A.Janani, learned counsel for the 6th respondent/Official Assignee, who had stepped into the shoes of the insolvent/Arjunlal Sunderdas.

25. Mr. R.Thiagarajan, learned counsel pointed out the agreement dated 05.11.2012 entered into between VIT and the insolvent and stated that VIT had paid consideration of Rs.21/- Crores to the insolvent for purchase of the schedule mentioned property. To enforce the agreement, VIT had filed C.S.No. 317 of 2014. The learned counsel stated that consequently, VIT had gained substantial interest and right over the property. It was contended by the learned counsel that therefore, when VIT came to know that there was yet another litigation pending in C.S.No. 285 of 2014 and which litigation was also to enforce another agreement of sale with respect to the very same property, A.No. 8678 of 2018 had been filed by VIT to implead themselves as a party/defendant in that particular suit, namely, C.S.No. 285 of 2014. It was claimed by the learned counsel that VIT had a direct interest in the outcome of such suit and therefore was a necessary and proper party and must be heard before any relief is granted or denied to either of the parties in the said suit. The learned counsel further stated that VIT should be permitted to test the agreement based on which C.S.No. 285 of 2014 had been filed since it is evident that over the same property, there are at least two separate agreements and it would only be appropriate that both the plaintiffs are given an opportunity to putforth their respective stands regarding the merits of their respective agreements and at the same time also put forward the demerits of the other agreement. It was also pointed out by the learned counsel that VIT having paid substantial consideration to the insolvent had acquired a right and interest over the property and therefore it was urged that the order under appeal should be interfered with and this Court should hold that the VIT was a necessary and proper party to the suit in C.S.No. 285 of 2014.

26. With respect to the status of the suit namely, that the evidence had been recorded and the suit was ripe for arguments, the learned counsel stated that simultaneous trial could be

conducted in both the suits and even otherwise, VIT should be permitted to participate in C.S.No. 285 of 2014 and must be granted an opportunity to establish that the agreement on the basis of which C.S.No. 285 of 2014 had been filed was not an agreement capable of being performed or recognised by this Court. The learned counsel also relied on a string of Judgments which would be discussed later in this Judgment.

27. Mr.T.V.Ramanujun, learned Senior Counsel, who appeared for B V Reddy Enterprises Pvt. Ltd., / BVR, the plaintiff in C.S.No. 285 of 2014 questioned the maintainability of the appeal. The learned Senior Counsel stated that the rights of the parties have not been finally crystalised and VIT must proceed with their suit in C.S.No. 317 of 2014 and establish their right to seek specific performance. It was very strenuously contended that VIT was not a necessary and was also not a proper party. Learned Senior Counsel stated that the plaintiff/BVR was the dominous litus and had a right to choose to implead as defendants, the parties against whom they seek the relief.

28. The learned Senior Counsel stated that BVR/ the plaintiff in C.S.No. 285 of 2014 had also entered into an agreement of sale with the insolvent and had paid the entire sale consideration and had also adduced evidence, which if analysed would establish that BVR is entitled for specific performance. The learned Senior Counsel pointed out that VIT herein was a stranger to all those agreements entered by BVR and therefore urged that the appeal should be dismissed.

29. Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee pointed out that the original owners of the property have stated that they have received the entire sale consideration from the insolvent and it was therefore clear that the insolvent for all practical purposes had established a right, title and interest over the property and therefore, had every right to contest the claims of the two plaintiffs. The learned counsel further pointed out that proof of the two respective agreements was a burden to be discharged by the respective plaintiffs and strangers to a contract can never establish such facts.

30. The learned counsel also pointed out that both the plaintiffs have to first establish bona fide in their transactions with the insolvent. He also stated that every transaction entered into by the insolvent before two years from the date of adjudication as an insolvent will have to be scrutinised by this Court and could be categorised as void. It was therefore urged that the appeal should be dismissed and arguments in C.S.No. 285 of 214 should be heard by this Court.

31. We have carefully considered the arguments advanced and the materials available on record.

Points for consideration:

32. The two primary points for consideration in this appeal are:

- (i) Whether the appeal is maintainable, and
- (ii) Whether VIT is a necessary and proper party to adjudicate the issues in C.S.No. 285 of 2014.

Point No.1:

33. Mr.T.V.Ramanujun, learned Senior Counsel for BVR the plaintiff in C.S.No. 285 of 2014 raised the issue of maintainability of the appeal. In this connection, the learned Senior Counsel stated that the appeal is not maintainable owing to the fact that the rights of the parties have not been finally adjudicated.

34. Mr.R.Thiagarajan, learned counsel relied on 2018 (11) SCC 722 [Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited., and Others] and stated that, by dismissal of the application seeking to be impleaded, the rights of the appellant/VIT had been effectively adjudicated or rather rejected.

35. We hold that it is not just the rights of the plaintiff or the defendants in C.S.No. 285 of 2014 which have to be examined but also the right of the appellant/VIT to participate in the suit proceedings as party / defendant. The learned Single Judge had held that the appellant/VIT had no right to be impleaded in C.S.No. 285 of 2014. That particular order which is now under appeal has effectively put an end to possibility of further participation in the judicial proceedings by the appellant/VIT in C.S.No. 285 of 2014. That order had finally adjudicated the rights of the appellant / VIT. When such right has been adjudicated and rejected in totality, then necessarily an appeal arises and an onus is cast on this Appellate Court to examine the correctness of such an order. Therefore, we would hold that the Appeal is maintainable. Point No.1 is answered accordingly.

Point No.2:

36. The facts when analysed are straightforward and simple. They revolve around documents/transactions entered into by the insolvent as power of attorney agent of S.Murali Mani and S.Balan Mani, who had both been the beneficiaries of a Will dated 21.01.1997 executed by Mrs. T.R.Subbulakshmi, who was the owner of the suit schedule property. They had appointed the insolvent /Arjunlal Sunderdas as their power of attorney agent

by a registered document dated 28.08.2006. By the said document, the insolvent was granted authority to negotiate for sale and to enter into the agreement of sale and as a matter of fact, to even sell the property at No.33, College Road, Nungambakkam, Chennai, measuring 5 grounds and 1077 sq.ft.

37. On 13.12.2006, the said S.Murali Mani and S.Balan Mani represented by their power of agent Arjunlal Sunderdas and his brother S.M.Lal entered into an agreement of sale with BVR/the plaintiff in C.S.No. 285 of 2014.

38. It had been stated in the said agreement of sale that the total sale consideration was Rs.4,08,65,624/- and that BVR had paid a sum of Rs.5/- crores.

39. A memorandum of understanding was entered into on the very same day between the insolvent and BVR to promote the said property.

40. Thereafter, a cancellation agreement was entered into between the insolvent and BVR on 23.02.2012. It was covenanted that the insolvent must return a sum of Rs.32,60,30,000/- being Rs.5/- crores paid towards purchase of the property, Rs.15/- crores paid towards development of property and Rs.52,60,30,000/- to be paid as compensation for non performance of the agreement of sale. By entering into this agreement, it would appear that direct relationship between the vendor, namely the insolvent acting as power of attorney agent on behalf of the owners and BVR stood frustrated.

41. It must also be kept in mind that this agreement was entered into after the period of limitation had expired to seek specific performance of the earlier agreement dated 13.12.2006. Whether a lapsed agreement can be cancelled after the period of limitation and then claimed to be revived owing to non compliance of a condition in the cancellation agreement not being satisfied is an issue to be answered by BVR in the course of adjudication of the issues in C.S.No. 285 of 2014.

42. It must however be kept in mind that the actual owners have admitted receipt of the total sale consideration from the insolvent. As on that date, the insolvent had a direct interest and right over the property.

43. It is also to be noted that much subsequently when Arjunlal Sunderdas was declared as insolvent, in the schedule of assets, this property at Door No.33, College Road, Nungambakkam, Chennai, was also mentioned as one of the assets of the insolvent.

44. The cancellation deed dated 23.02.2012 however is claimed to be a contingent agreement, subject to the insolvent paying compensation of Rs.52,60,30,000/- for non performance. The insolvent issued a cheque for Rs.56,93,75,000/- which included accrued interest, and which cheque was dishonoured on presentation before the Bank. Consequently C.S.No. 285 of 2014 filed in which it is claimed that the cancellation agreement being a contingent agreement, has been waived to pay as the primary condition to return the amounts paid and to pay the compensation agreed for non performance was not satisfied. It was further claimed that such dishonour of the cheque had revived the agreement of sale dated 13.12.2006, giving a cause of action to institute the suit in C.S.No. 285 of 2014 seeking specific performance of the agreement of sale dated 13.12.2006.

45. Parallely VIT also appear to have indulged in transactions with insolvent, but not with the suit property but to purchase lands in the vicinity at Bangalore and towards that transaction, claimed to have paid a sum of Rs.32/- crores out of the total sale consideration of Rs.47,25,00,000/- for purchase of the said lands. An agreement of sale had also been entered into with the insolvent on 27.11.2007. VIT, claimed that they then found that those properties near Bangalore suffered from various encumbrances and litigations and consequently sought return of the advance amount of Rs.32/- Crores. The insolvent is said to have paid back only a sum of Rs.11/- crores. For the balance sum of Rs.21/- crores, the insolvent held out that he would sell the suit property and also some other properties and therefore claiming that the entire sale consideration towards purchase of the suit property had been paid, VIT claimed a right over the property, based on the agreement of sale with the insolvent on 05.11.2012. However, in the agreement, there is no mention about the earlier transactions or the agreement dated 27.11.2007 with respect to the lands in the vicinity of Bangalore City or that Rs.21/- crores was not the total consideration for the suit property and that the insolvent had also promised to convey other properties to VIT. Those facts are stated only in the plaint and not in the agreement. The extent of land which is the subject of the agreement dated 05.11.2012 was also not described properly.

46. On the basis of the aforementioned said documents, BVR and VIT respectively had instituted two separate suits, with respect to the same property, seeking specific performance of their respective agreements of sale.

47. We hold that the burden is entirely on each of the two plaintiffs, BVR and VIT to independently prosecute their respective suits and to establish their bona fide and that the agreements of sale on which they claim a right to seek specific performance are lawful and should be recognised by the Court.

48. We further hold that by impleading VIT in the suit instituted by BVR or by impleading BVR in the suit instituted by VIT no advantage would accrue to either of them. Neither of them can seek automatic decree in their respective suits if they were to destabilise the agreement of the other.

49. In the instant case, even if VIT were to be impleaded and even if VIT were to establish that the agreement on the basis of which BVR seeks specific performance must not be recognised by the Court, it would not automatically mean that VIT would get a decree in their suit in C.S.No. 317 of 2014. They would still have to establish that the agreement dated 05.11.2012 was a bona fide agreement and was capable of enforcement.

50. It is thus seen that presence of either one of the party in the other suit would neither advance their respective causes nor would be helpful in establishing the bona fide of their respective agreements. The two suits run parallelly. The reliefs sought in the two suits must be adjudicated independently on the basis of evidence adduced by the respective plaintiffs, namely, BVR and VIT in their respective suits and on analysis of the evidence and documents produced by them. The presence of the other is not required. The two plaintiffs in their respective suits have to stand or fall on their non merits of the case. Failure of one plaintiff to prove their case will not automatically enure to the plaintiff in the other suit. Therefore to meet the ends of justice, returning to the citations relied by counsels on either side, we find our view is well fortified by these Judgments as discussed below:-

51. Mr.R.Thiagarajan, learned counsel relied on 2013(2) CTC 104 [Thomson Press (India) Limited., Vs. Nanak Builders 7 Investors P. Ltd.,]. That was a Judgment of the Hon'ble Supreme Court examining the rights of a transferee pendente lite to be impleaded in a suit. It was stated that under Order 1 Rule 10 (2) discretion is given to the Court to add a necessary party to the suit and therefore, since a transfer pending the suit is not void ab initio, the transferee can be considered as a necessary party. We are clear about the facts involved in this case. Unlike the petitioner in the case cited, the appellant/VIT herein is not a transferee but is only an agreement holder and an agreement holder has no right or charge or interest over the property and therefore, this Judgement would not come to the assistance of the appellant.

52. Reliance was then placed on 2012 (8) SCC 384 [Vidur Impex and Traders Pvt., Limited., and Others Vs. Tosh Apartments Pvt. Limited., and Others], which again related to a transfer pendente lite in violation of an order of Court prohibiting such

transfer. The Hon'ble Supreme Court held that since the transactions were in violation of an order of the Court, the transferee cannot be impleaded. Mr. R.Thiagarajan, the learned Counsel distinguished the facts stating that there was no legal bar for the appellant/VIT from entering into an agreement of sale and therefore, claimed that the appellant had a right to be impleaded.

53. It is pertinent to note, the point under consideration is not whether there is any legal bar for VIT to enter into an agreement with the insolvent or whether VIT has a right necessitating to get impleaded in a suit initiated by BVR by applying the dictum laid in Thomson Press (India) Limited., (referred supra) or Vidur Impex and Traders Private Limited (referred supra). The appellant is not a transferee but only an agreement holder. It is appropriate and legal not to allow the impleading petition but to direct the appellant/VIT to prove their case independently. There is a difference in the right which accrues to a transferee under a sale deed and a right which accrues to an agreement holder. One is an executed contract and the other is an executable contract and therefore no right arises. The only right which flows is to seek performance of such contract and for that purpose, the appellant/VIT has instituted a suit and in that suit the appellant/VIT should establish their right. This Judgment does not advance the cause of the appellant.

54. Mr.R.Thiagarajan, learned counsel then relied on (2007) 8 SCC 506 [Sunil Gupta Vs. Kiran Girhotra and Others). That appeal before the Hon'ble Supreme Court arose from probate proceedings. Pending probate proceedings, there was a transfer of the property. The issue was with respect to impleading the transferee in the probate proceedings. The Hon'ble Supreme Court, as a matter of fact upheld the Judgment of the High Court denying impleading of such transferee. This Judgment actually works to the disadvantage of the appellant herein.

55. Mr.R.Thiagarajan, learned counsel then relied on (2006) 5 SCC 532 [Bhogadi Kannababu and Others Vs. Vuggina Pydamma and Others]. This was relied on for the principles behind Order 1 Rule 10 CPC wherein the Hon'ble Supreme Court held that the Court should dispose the said application by examining whether the presence of the applicant before the Court would be necessary in order to enable the Court effectually and completely adjudicated and settle all the questions.

56. In the instant case, the appellant/VIT is not required to adjudicate the issues in C.S.No. 285 of 2014. The plaintiff/BVR in C.S.No. 285 of 2014 has to prove the averments made in the plaint through admissible oral and documentary

evidence. That burden can never be shifted. The presence of the appellant/VIT is not required by the plaintiff / BVR to discharge such burden. This Court on scrutinising the case of the appellant as put forth in their application as well as in the plaint in C.S.No. 317 of 2014 instituted by then, holds that the appellant is not a necessary party nor a proper party.

57. Mr.R.Thiagarajan, learned counsel then relied on 2005 (2) CTC 676 [Kasturi Vs. Iyyamperumal and Others]. The Hon'ble Supreme Court held that in a suit for specific performance, persons who had purchased the property subsequently would be a necessary party. Here VIT has not purchased the property.

58. Mr.R.Thiagarajan, learned counsel then relied on (2018) 11 SCC 208 [Dr.Kazimunnisa (dead) by legal representatives Vs. Zakia Sultana (dead) by legal representatives] for the principle that when two cases between same parties in relation to same piece of suit land had been filed for identical reliefs, then the two cases should be clubbed together to avoid conflict in decision.

59. As observed earlier, in the instant case, BVR will have to establish their case for specific performance. Similarly VIT will have to establish their case for specific performance. One destabilising the case of the other will not grant any advantage to the party, who so destabilises the case of the other. Both will have to independently prove their case.

60. It is also seen that evidence in C.S.No. 285 of 2014 has been completed, but pleadings are not yet completed in C.S.No. 317 of 2014. The cause of action for both the suits are different. The documents relied on by both the parties are different. The transactions alleged by both the parties are different. The foundational issues in both the suits are different. Therefore, no purpose would be served by impleading VIT in the suit instituted by BVR.

61. Both Mr.R.Thiagarajan and Mr.T.V.Ramanujan relied on (2010) 7 SCC 417 [Mumbai International Airport Private Limited., Vs. Regency Convention Centre and Hotels Private Limited., and others]. The Hon'ble Supreme Court had very clearly held as follows:-

"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a

party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

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 proper 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 proper party to the suit for specific performance. "

Sum Up:

62. While applying the principle of law as stated above to the facts, it is very clear that VIT is neither a necessary nor a proper party in the suit instituted by BVR seeking specific performance of an independent agreement of sale. The burden of proof lies on the shoulders of BVR to prove the agreement and more importantly to also prove that the relief of performance is not hit by the law of limitation particularly when the agreement of the year 2006 was cancelled in the year 2012 and later claimed to have been revived. It has to be examined whether by 2012, by subsequent events and conduct of the parties the agreement of the year 2006 had lapsed. The averments of the appellant in his plaint runs on a different track, unconnected with the facts of the case in hand. Impleading VIT in the suit instituted by BVR would be of no assistance either to VIT or to BVR or to meet the ends of Justice. Point No.2 is answered accordingly.

Conclusion:

63. In view of the above reasons, we uphold the order of the learned Single Judge and this Original Side Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vsg

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2ccs to Mr.A.Saravanan, Advocate, S.R.No.41637

+1cc to M/s.R.Ramya, Advocate, S.R.No.41655

+1cc to Mr.K.V.Ananthakrishnan, Advocate, S.R.No.42472

OSA.No.256 of 2020

PA(CO)
RLP(27/07/2022)