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C.M.P.No. 16807 of 2021

IN

S.A.No. 1444 of 2000

C.V.KARTHIKEYAN, J.

The Civil Miscellaneous Petition has been filed by the third party to the Appeal seeking to be impleaded under Order 22 Rule 10 of CPC as the 11th respondent in the Appeal.

2. The Second Appeal has been filed by the plaintiff in O.S.No. 1142 of 1996 on the file of the I Additional District Court at Pondicherry. The said suit was dismissed by Judgment dated 24.12.1998. Questioning such Judgment, the plaintiff had filed A.S.No. 16 of 1999 which came up for consideration before the Principal District Court at Pondicherry who confirmed the dismissal of the suit by Judgment and Decree dated 02.02.2000. Questioning the concurrent findings of both the Courts, the plaintiff has filed the present Second Appeal.

3. The Second Appeal has been admitted and substantial questions of law have been framed on 13.03.2000. In the meanwhile, the defendants, who are the respondents before this Court had both died, necessitating impleading their legal representatives. But now counsel had



entered appearance either on behalf of the defendants/respondents on behalf of the legal representatives.

4. The present petitioner claims right over the suit property owing to the fact that he claims to have purchased the property by a sale deed dated 13.06.2005 wherein he had purchased an extent of 0.26.00 hectare out of 0.27.00 hectare. This purchase had been from the first respondent / first defendant in the suit. As stated, the first respondent/first defendant had died pending the Appeal. Having purchased the property, the petitioner now claims that he is a necessary party in the Second Appeal and has also expressed apprehension that since the respondents are not represented, his valuable right would be affected if he is not permitted to advance arguments in the Second Appeal.

5. Heard the learned counsel for the petitioner and also the learned counsel for the respondent/appellant.

6. A counter had been filed questioning locus of the present petitioner particularly because he had purchased the property pendente lite and more over, pending the Second Appeal and therefore, it is contended by the learned counsel for the respondent that the petitioner can have only



the limited rights which the respondents could gain in view of any decision taken in the Second Appeal.

7. It has been stated that the petitioner herein cannot canvas afresh the case or state the case on a new point of law or on facts but should be limited to the pleadings already pleaded by the parties and the evidence already recorded.

8. Having heard the learned counsels on either side. I hold that since the Second Appeal has been admitted and substantial questions of law had been framed, it would only be appropriate that the appeal is decided on merits by this Court and the substantial questions of law are answered. That would give a clarity to the issues raised by the parties. However, while examining that particular aspect, it is also to be noted that the respondents had taken a conscious decision not to appear before this Court. They have sold 0.26.00 hectare out of 0.27.00 hectare to the present petitioner herein and naturally having received the sale consideration they exhibit reluctance to participate in the appeal proceedings. The right of the petitioner has accrued only after the Second Appeal had been admitted. He has to stand or fall on the pleadings already filed by the parties and the evidence already adduced by the



parties. The petitioner herein cannot seek to file any fresh pleadings or seek further facts to be pleaded. Neither can he request further evidence either oral or documentary to be advanced.

10. It is a fact that he had purchased the property in the year 2005. He has to maintain the appeal on the materials available on record and on their interpretation.

11. I would therefore rather grant an opportunity to the present petitioner to advance the case subject to the pleadings and evidence already on record.

12. With such observation, this Civil Miscellaneous Petition is allowed. No costs.

vsg

14.06.2022

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