



C.R.P(PD).No.2314 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.2314 of 2022
and C.M.P.No.11858 of 2022

R.N.Loganathan

...Petitioner

..Vs.

1.A.V.Selvam

2.P.Sekar

3.H.Tejaram

4.H.Pooraram

..Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 23.06.2022 made in I.A.No.301 of 2021 in O.S.No.91 of 2019 on the file of the learned Principal District Judge, Tiruvannamalai.

For Petitioner : Mr.J.Ramakrishnan

For Respondents : Served and no appearance



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ORDER

This Civil Revision Petition has been preferred challenging the order dated 23.06.2022 made in I.A.No.301 of 2021 in O.S.No.91 of 2019 on the file of the learned Principal District Judge, Tiruvannamalai.

2.Heard the learned counsel for the petitioner and perused the entire materials available on record. Though notice has been served to the respondents, none appeared for them either in person or through counsel.

3.The revision petitioner is the plaintiff, who has filed the said suit for specific performance with an alternate relief. During the pendency of the suit, the revision petitioner/plaintiff had filed an interlocutory application in I.A.No.301 of 2021 to implead the proposed parties namely respondents 3 and 4 herein as defendants 3 and 4 and the same was dismissed by the impugned order. Aggrieved over that, the petitioner has preferred this revision petition.



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4.The learned counsel for the petitioner submitted that the proposed parties had purchased the suit property from the second respondent/second defendant during the pendency of the suit; respondents 3 and 4 are not bonafide purchasers and hence, they are necessary parties to the suit; but, the learned trial Judge had chosen to dismiss the said application by the impugned order by observing that as the petitioner/plaintiff had produced an unregistered sale agreement, the proposed parties need not be added as parties to the suit; and the above observation of the learned trial Judge in the application filed to implead parties would amount to rendering a finding in the suit itself.

5.The records would show that the suit has been admitted only on an unregistered sale agreement. The admissibility of the unregistered sale agreement as evidence in the suit for specific performance has already been settled. An exemption has been provided under Section 49 of the Registration Act itself. Whatever may be the case, that is not the issue



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before the learned trial Judge in an application filed for impleadment of parties. Admittedly, respondents 3 and 4 had purchased the suit property during the pendency of the suit. The petitioner, who is the plaintiff in the suit has alleged that the respondents 3 and 4 are not the bonofide purchasers. The proposed parties had filed their counter to the said application by stating that they are bonafide purchasers and that they were not aware of the existence of the suit sale agreement. The contentions of both the revision petitioner and the proposed parties in the said application filed for impleadment namely respondents 3 and 4 herein would show that there are some contentious issues to be settled in the suit as against respondents 3 and 4 as well. However, the learned trial Judge had misconstrued the very scope of the said application and the import of Section 49 of the Registration Act and dismissed the said application.

6. For the sake of completion, Section 49 of the Registration Act is



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extracted hereunder:

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"Effect of non-registration of documents required to be registered.—

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."

7.The Proviso to Section 49 would clarify the Courts about the admissibility of an unregistered document in the suit for specific performance.



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8.At the risk of repetition, it is reiterated that even though such a contention is raised, that can be the issue to be decided in the suit nor in the application filed for impleadment. The proposed parties are not strangers and the petitioner/plaintiff has got a cause of action, in view of the subsequent purchase during the pendency of the suit. The learned trial Judge had omitted to appreciate the cause of action and the convenience of having all the relevant parties in the suit for the purpose of effective adjudication. No prejudice would be caused by adding the proposed parties also as defendants 3 and 4 in the suit. If they are not impleaded as parties to the suit and if the revision petitioner/plaintiff is ultimately successful, then some complications may arise while executing the decree. In order to avoid all such technicalities, in the interest of justice, the proposed parties can be added as parties to the suit. In view of the above stated reasons, the order of the learned trial Judge is liable to be set aside.



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9.In the result, this Civil Revision Petition is allowed and the order of the learned Principal District Judge, Tiruvannamalai, dated 23.06.2022 made in I.A.No.301 of 2021 in O.S.No.91 of 2019 is hereby set aside. Consesquently, the connected CMP is also closed.

30.08.2022

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Index:Yes No

Speaking Order:Yes/No

To

- 1.The Principal District Judge, Tiruvannamalai.
- 2.The Section Officer,
VR Section, Madras High Court, Chennai.



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R.N.MANJULA,J.

Vkr

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