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C.R.P(PD)No.1986 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P(PD)No.1986 of 2020
and C.M.P.No.12334 of 2020

M.Loganathan

...Petitioner

VS.

1.M.Mohanasundaram

2.R.Thangavel

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 03.02.2020 made in I.A.No.01 of 2019 in O.S.No.74 of 2015 on the file of the I Additional Subordinate Judge, Erode.

For Petitioner : Mr.Guruprasad

For Respondents : Served – Name printed – No appearance

ORDER

This Civil Revision Petition has been filed against the Fair and Decretal Order dated 03.02.2020 made in I.A.No.01 of 2019 in O.S.No.74 of 2015 on the file of the I Additional Subordinate Judge,



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Erode.

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2.The case of the petitioner is that the petitioner is the plaintiff in the suit. The suit for the relief of specific performance and for injunction. In the said suit, both the parties are adduced evidence and when the suit was listed for arguments, the petitioner/plaintiff filed I.A.No.1 of 2019 stating that the first respondent has executed a Mortgage Deed in respect of the suit property conclusively in the name of the second respondent on 10.11.2017. The Mortgage Deed is created only to defraud the lawful right under the Sale Agreement without any consideration. However, the mortgagee is to be impleaded as party to determine the dispute involved in the suit.

3.Learned counsel for the petitioner submitted that the Court below failed to appreciate the scope of Order 1 Rule 10(2) in a proper perspective and had dismissed the application for impleading without properly advertng to the facts and circumstances of the present case.

4.Learned counsel for the petitioner further submitted that the Court below failed to consider that in all likelihood there will be multiplicity of proceedings if the proposed party does not get impleaded. In order to avoid such conflict and multiplicity, it is necessary to implead



the mortgagee to give quietus to the issue.

WEB COPY 5. Heard learned counsel for the petitioner and perused the materials available on record. Though the notice to the respondents having been served and printed in the cause list, there is no appearance on their side.

6. It is pertinent that a person can be arrayed as a party to the proceeding only if he falls within the ambit of either “necessary party” or “proper party”. It is necessary to implead the proposed party to know the truth as the Mortgage Deed was made without valid consideration as the mortgagor and mortgagee were close allies who had colluded and created an encumbrance in the suit property.

7. On perusal of documents, it seen that the Mortgage Deed was executed by the first respondent during the pendency of the suit in the name of the second respondent. It is settled that any document executed by the parties during the pendency of the case will be hit by law of lis pendens. To decide, whether the Sale Agreement relied on the petitioner/plaintiff for having the Sale Deed in his favour, the presence of the mortgagee viz., the second respondent is not at all necessary. As the



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second respondent has no semblance of right, he need not be impleaded in the suit for specific performance. The related questions to be determined is whether the first respondent/defendant is under obligation to execute the Sale Deed in respect of the suit property in the name of the plaintiff. For this nature of suit, the subsequent mortgagee cannot become a necessary party.

8.Admittedly, the suit for the relief of specific performance and for injunction. In the said suit, both the parties are adduced evidence and when the suit was listed for arguments, the petitioner/plaintiff filed I.A.No.1 of 2019 stating that the first respondent has executed a Mortgage Deed in respect of the suit property conclusively in the name of the second respondent on 10.11.2017. The Mortgage Deed is created only to defraud the lawful right under the Sale Agreement without any consideration.

9.Considering the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, this Court is not inclined to interfere with the order dated 03.02.2020 passed by the learned I Additional Subordinate Judge, Erode.



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10. In view of the above, the order dated 03.02.2020 passed by the learned I Additional Subordinate Judge, Erode is hereby confirmed and accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

15.12.2022

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order
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To

The I Additional Subordinate Judge,
Erode.



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V.BHAVANI SUBBAROYAN, J.

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