



C.R.P(PD).Nos.763 and 765 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(PD).Nos.763 and 765 of 2022
and C.M.P.Nos.3842 & 3843 of 2022

A.Tirumuruga Prabhu

... Petitioner in both C.R.P.s'

Vs

1. S.Aijithkumar Duggar

2. B.Anandha Barathi

... Respondents in both C.R.P.s'

Prayer in C.R.P.No.763 of 2022:- Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and Decretal order passed in I.A.No.3 of 2021 in I.A.No.1 of 2019 in O.S.No.25 of 2019 on the file of the Court II Additional District Judge at Tiruppur by allowing these Civil Revision Petition.

Prayer in C.R.P.No.765 of 2022:- Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and Decretal order passed in I.A.No.2 of 2019 in O.S.No.25 of 2019 on the file of the Court II Additional District Judge at Tiruppur by allowing these Civil Revision Petition.

In both C.R.P.s'

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For Petitioner : Mr.K.Rajendra Prasad
For R1 : Mr.I.Abrar Md Abdullah
For R2 : Mr.J.Pothiraj and
Mr.M.Javrudeen

COMMON ORDER

These Civil Revision Petitions have been preferred challenging the order of the learned II Additional District Judge, Tiruppur made in I.A.No.3 of 2021 and I.A.No.2 of 2019 in O.S.No.25 of 2019.

2. The revision petitioner is a third party, who has filed the petitions to implead himself as a party to the proceedings in O.S.No.25 of 2019 and the interlocutory petition filed by the 1st respondent/plaintiff against the 2nd respondent/defendant. The said petitions were dismissed. Aggrieved over that the revision petitioner has filed this revision petition.

3. Learned counsel for the petitioner submitted that the petitioner is a bonafide purchaser of the suit property from the 2nd respondent/defendant and if any order of attachment is passed on the suit property, that would affect his



interest; in order to avoid multiplicity of proceedings and to safeguard his interest,

the petitioner should be impleaded as a party to the proceedings.

4. The learned counsel for the respondent/plaintiff submitted that the suit has been filed for recovery of advance money which was paid by him in pursuance to the Sale agreement dated 18.07.2018, entered between himself and the 2nd respondent/defendant in respect of the suit property; even, it might be true that the proposed party is a subsequent purchaser, his claims in respect of the suit property or in respect of his transactions with the 2nd defendant cannot be raised in this suit.

5. Admittedly, the suit has been filed for recovery of a sum of Rs.19,04,000/- together with an interest @ 24% per annum on Rs,17,00,000/- from the date of the suit to till the date of realization on the basis of the Sale agreement dated 18.07.2018 alleged to have been executed between the 1st respondent and 2nd respondent in respect of the suit property. The revision petitioner, who is the third party and who claims himself as a subsequent purchaser of the suit property, has filed a petition to implead himself as party to



the proceedings. It is needless to state that the right of the subsequent purchaser can be only through his vendor and if any order is passed against the vendor, that would bind the suit property and the interest of the subsequent purchaser has well. Since, the revision petitioner claims his right or interest from the suit property only through the 2nd defendant, he has to seek remedy only through the 2nd defendant.

6. The suit has not been filed for the relief of specific performance nor for delivery of possession. The agreement holder of the suit property, who is the proposed purchaser has filed the suit for recovery of his advance money. It is needless to state that the buyer has got the right to claim charge over the property, which is agreed to be sold in his favour to the extent of the sale consideration paid by him.

7. In support of his contention, the learned counsel for the respondent cited a decision of the Hon'ble Supreme Court held in the case of ***'Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and Others'***, reported in (2013) 5 Supreme Court Cases 397. The attention of this Court is



drawn to Paragraphs 25 and 57 in the above said Judgment and it is extracted

hereunder:-

“ ...

25. In Vidur Impex the Supreme Court again had the opportunity to consider all the earlier judgments. The fact of the case was that a suit for specific performance of agreement was filed. The appellants and Bhagwati Developers though total strangers to the agreement, came into picture only when all the respondents entered into a clandestine transaction with the appellants for sale of the property and executed an agreement of sale which was followed by sale deed. Taking note of all the earlier decisions, the Court laid down the broad principles governing the disposal of application for impleadment. Para 41 is worth quoting hereinbelow: (SCC p.413)

“ ...

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

... ”

...



57. To sum up:

57.1. *The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.*

57.2. *The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.*

57.3. *Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit.*

57.4. *The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.*

...”

8. In the said Judgment, the Hon'ble Supreme Court has clearly held that the necessary party is a person, who ought to have been joined as a party and without his presence, the matter in issue cannot be dealt effectively. The defence raised by a third party purchaser can only be against the 2nd respondent/defendant in a suit



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for specific performance. But, in the suit for recovery of the advance amount, the transactions is completely between the respondent/plaintiff and the defendant and for which the subsequent purchaser is a third party.

9. However, it is open to the revision petitioner to take appropriate proceedings against the 2nd respondent/defendant, if he is aggrieved due to the acts on the part of the 2nd respondent. Since, the learned trial Judge has rightly dealt the issue and allowed the petition and I do not find any reason for interference.

10. In the result, the Civil Revision Petitions are dismissed and the order of the learned II Additional District Judge, Tiruppur made in I.A.No.3 of 2021 in I.A.No.1 of 2019 and I.A.No.2 of 2019 in O.S.No.25 of 2019 is hereby confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.

11.07.2022

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Index : Yes
Internet : Yes
Speaking Order

R.N.MANJULA, J.



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To

1. The II Additional District Judge, Tiruppur
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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