



CRP(MD)No.1498 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.1498 of 2022 and
CMP(MD) No.6288 of 2022

L.Bharathikumar

... Petitioner

Vs

1.Selvam
2.Soundarrajan
3.Kanagavalli
4.Kasiviswanathan
5.Ponnuthai
6.Athieswaran

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.03.2022 passed by the Sub-Judge, Manamadurai in I.A.No.4 of 2021 in O.S.No.1 of 2020.

For Petitioner : Mr.S.Poornachandran
For Respondents : Mr.M.Gurudas



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ORDER

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This Civil Revision Petition is filed as against the order passed by the learned Subordinate Judge, Manamadurai in I.A.No.4 of 2021 in O.S.No.1 of 2020, dated 22.03.2022.

2.The plaintiffs, namely, Selvam and Soundarrajan have filed a suit in O.S.No.25 of 2015 as against the defendants, before the Subordinate Court, Sivagangai. Subsequently, it was transferred to Subordinate Court, Manamadurai and taken on file as O.S.No.1 of 2020. During pendency of the above suit, the revision petitioner purchased the second item of suit schedule property from the second defendant. Hence, he filed the Interlocutory Application in I.A.No.4 of 2021, under Order I Rule 10(2) of Civil Procedure Code, to implead himself as a fifth defendant in the suit in O.S.No.1 of 2020. The said application was dismissed by the trial Court that though he purchased the suit schedule property pending the suit, as per Section 52 of Transfer of



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Property Act, he is bound by the order of the Court in the suit.

Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner submits that he has purchased second item of suit schedule property from the second defendant on 01.10.2019 and on that date, the suit was not in existence. According to the learned counsel for the petitioner, the suit was dismissed for default on 04.06.2019 and it was restored on file only on 17.12.2019 and during the interregnum period, i.e on 01.10.2019, he purchased the property and therefore Section 52 of Transfer of Property Act will not attract in this case. Hence, the order of the trial Court has to be set aside.

4.The learned counsel appearing for the respondent submits that the suit was originally filed before the Subordinate Court, Sivagangai in O.S.No.25 of 2015 and subsequently it was transferred to Subordinate Court, Manamadurai and taken on file as O.S.No.1 of 2020.



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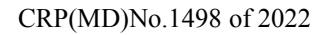
When the case was taken up for hearing by the Subordinate Court, Manamadurai on 04.06.2019, the learned counsel for the respondent, who was contesting the suit at Sivagangai is also contesting the suit at Manamadurai and due to some unavoidable circumstances, he could not attend the hearing on 04.06.2019 and therefore, the suit was dismissed for default. Thereafter, immediately, the plaintiffs filed the application to restore the suit on 17.06.2019. The defendants/respondents 3 to 6 took time in filing the application for setting aside the order and has also created the document in favour of the third party on 01.10.2019 and in the strength of the document dated 01.10.2019, the petitioner, being a third party has filed this application under Order I Rule 10(2) of Civil Procedure Code only on 22.11.2021 and that too at the stage when the plaintiffs' side evidence has been completed. This, according to the learned counsel for the respondent 1 &2/plaintiffs is to drag on the proceedings, which is pending from the year 2015. Hence, there is no need to interfere in the order of the trial Court.



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5.This Court considered the rival submissions made and also perused the materials placed on record.

6.This Civil Revision Petition is filed as against the order passed by the trial Court in I.A.No.4 of 2020. The said Interlocutory Application was filed by the revision petitioner/third party to the suit in O.S.No.1 of 2020, to implead himself as a necessary party to the suit, under Order 1 Rule 10(2) of Civil Procedure Code. The suit in O.S.No.1 of 2020, which is pending at the Subordinate Court, Manamadurai was originally filed before the Subordinate Court, Sivagangai in the year 2015 and subsequently, it was transferred to Subordinate Court, Manamadurai in the year 2019. When it was taken up for hearing on 04.06.2019, the learned counsel appearing for the plaintiffs were absent and therefore it was dismissed for default. The respondents 1 & 2/the plaintiffs also filed restoration application immediately. However, it was ordered on 17.06.2019 and in the interregnum period, this petitioner/third party has purchased the property from the second



“5...A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A property party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes...”



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The right of the revision petitioner is to stand in the shoes of his vendor/the second defendant and he has to work out his remedy/right at the stage of final decree or by way of separate suit. The transferee is not entitled as of right to be made a party to the suit. The trial Court has rightly held that the revision petitioner is not a necessary or proper party for effective and complete adjudication of the suit.

7.In view of the above, there is no need to interfere with the order of the trial Court. However, it is always open to the petitioner to work out his remedy in the manner known to law. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.07.2022

Index : Yes / No.

Internet : Yes / No.

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To

The Subordinate Court, Manamadurai

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