



C.M.P.No.12594 of 2023 in O.S.A.No.277 of 2013

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S.S.SUNDAR, J.

and

C.KUMARAPPAN, J.

(Order of the Court was made by S.S.SUNDAR, J.)

This civil miscellaneous petition is filed to implead the applicants in the petition as Respondent Nos.11 to 27 in the main appeal, O.S.A.No.277 of 2013.

2. The appeal in O.S.A.No.277 of 2013 is by the plaintiff in the suit for specific performance in C.S.No.632 of 1997, based on the sale agreement entered into by the plaintiff with the defendants 1 to 9 dated 3.8.94. The suit property is an extent of 20 grounds or thereabouts comprised in T.S.No.13/253 (part) / Block No.21 situate in Urur Village, Mylapore Triplicane Taluk with reference to the four boundaries mentioned in the schedule. The suit for specific performance has been dismissed. As against the judgment of the learned single Judge, the above appeal, O.S.A.No.277 of 2013 is filed. Though the suit was filed in 1997 and the appeal has been filed in 2013, the present application is filed by third parties to implead themselves as parties to this appeal. In the affidavit filed in



support of this petition, it is the case of petitioners that they have purchased undivided 17/18 shares of land in Plot No.1 and that they could not get the sale deed in respect of the remaining 1/18th share in the said property, as the person entitled to the undivided 1/18 could not get the clearance from the Urban Land Ceiling authorities.

3. It is admitted that the suit property is in respect of Plot No.2 and the property purchased by the petitioners is entirely different from the suit property. However, it is the case of petitioners that the respondents 2 to 4 and 7 to 9 and one Karthika Thirunal Lakshmi Bayi had executed a sale deed in respect of their undivided 77.50% shares of land out of 20 grounds in favour of one Raj Ganesan along with a 33 feet pathway leading to the main road through the applicants property. Highlighting their right over the property, which is shown as pathway leading to the suit property, the applicants have stated that they are also necessary and proper parties to this appeal, as they have an interest over the subject matter of the property conveyed in favour of the subsequent purchasers by the defendants 1 to 9.

4. The learned Senior Counsel appearing for the defendants 1 to 9 seriously disputed the averments in the affidavit and contended that there is



a dispute with regard to the actual extent and the property that was conveyed by the defendants 1 to 9 in favour of the applicants. The issue that may arise or the dispute between the defendants 1 to 9 and third parties in respect of a property adjacent to the suit property, cannot be decided in the suit for specific performance, where the parties and the cause of action are entirely different.

5. The learned counsel appearing for the petitioners submitted that the appellant, who is the plaintiff in the suit, has raised an issue in the suit regarding the title and enjoyment of the property which is in the enjoyment of the applicants pursuant to the sale deed that was prior to the suit agreement.

6. But this Court is of the view that even that cannot be a reason or ground to implead them as parties in the appeal arising out of a suit for specific performance in respect of a different property altogether. The suit for specific performance is in respect of 20 grounds of land. Even according to the petitioners, the suit property is entirely different from the property, in which the applicants claim 17/18 share out of 171 cents. It is well settled that by impleading a person, the scope of litigation cannot be enlarged. The



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question whether the applicants are having exclusive title or 17/18 share over the plot which is adjacent to the suit property, cannot be the subject matter of the present litigation, where the main issue is whether the suit agreement is enforceable in respect of the suit property. Though it is stated that the applicants purchased the property long back, when the suit was pending from 1997, the applicants cannot seek to come on record now, on the ground that they have purchased 17/18 share from the defendants 1 to 9 especially when the sale is long prior to the suit agreement. The applicants may have an independent right. However, this Court has not expressed any opinion on the merits of the case pleaded by the applicants. Therefore, it is open to the applicants to file an independent suit either against the defendants 1 to 9 or against the appellant depending upon the outcome of this appeal or even without reference to the pendency of this appeal and establish their right in the manner known to law. None of the observations in this application can be construed as an observation or decision on the merits of the case pleaded before us by any of the parties in this application. The civil miscellaneous petition stands disposed of.

(S.S.S.R.,J.) (C.K.,J.)
19.06.2023

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