



WEB COPY



A. No.4428 of 2023

Reserved on: 07.06.2024

Pronounced on: 14.06.2024

A. No.4428 of 2023
in
C.S. No.63 of 2016 and
C.S. Nos.721 & 983 of 2015

P.B.BALAJI, J.

This Application has been filed seeking to implead the Applicants as Proposed Plaintiffs in C.S. No. 63 of 2016.

2. I have heard Mr.T.N.Rajagopalan, learned counsel for Applicants and Mr.S.Ragul Balaji, learned counsel for the third Respondent.

3. The Applicants state that they have purchased the suit property in and by sale deed dated 11.11.2022, for valid sale consideration, under a registered sale deed bearing No. 1587/ 2022 on the file of the Sub-Registrar, Sowcarpet. They have sought to implead themselves as Plaintiffs in the suit. Their specific contention is that they have purchased the suit property from the Plaintiffs 1 and 2 who are arrayed as Respondents 1 and 2 in the present Application, for valid consideration and the Respondents 1 & 2 that is, the Vendors of the Applicants who have already sold the property are not any



longer interested in contesting the suit and thus the Application has come to file.

4. First defendant namely, third Respondent in the above Application has filed a counter affidavit stating that there is no entity by the name of Sovereign Travel Goods Limited, arrayed as Second Defendant / Fourth Respondent and that according to the third respondent, he has entered into an agreement of sale as early as on 20 th August 1996, for purchasing the suit property for a total sale consideration of Rs.16,00,000/- (Rupees Sixteen Lakhs only).

5. According to the third Respondent, the entire sale consideration has already been paid and the third respondent is in physical possession of the suit property in part performance of the said agreement of sale. It is also alleged that the sale deed in favour of the Applicants is fraudulent, void and not binding on the third Respondent. It is also contended that the suit has already been dismissed as against the third respondent, namely the first defendant in the suit way back on 24.04.2018 and the said order has



become final and consequently the suit having been dismissed as against the third Respondent already, the question of impleading the Applicants does not arise.

6. I have considered the rival submissions advanced by the learned counsel on either side.

7. The above suit has been filed for the following beliefs :

“1. Whether the suit can proceed against the third defendant, when the same has been dismissed against the first defendant ?

2. Is not Mr.N.V. Vathsavardadhan, a proper and necessary party to the present suit?

3. Whether the Plaintiffs are the bonafied purchasers of the suit scheduled property ?

4. Whether landlord and tenant relationship between Mr.N.V. Vathasavardadhan and the third defendant had ceased with effect from 28.08.1995 ?

5. Whether the plaintiff is entitled to relief of specific performance ?

6. Whether the plaintiffs are entitled to declaration, recovery of possession and Mense Profit of the suit schedule property ?

7. Whether the Sale Deed dated 22.08.2014 and 01.09.2014, executed by Mr. N.V. Vathsavarthan through his Power of Attorney Mr.A.Muthuvelu in favour of the Plaintiffs are valid and binding ?



8. Whether the plaintiffs are entitled to damages as prayed for the use and occupation of the suit property by the defendants ?

9. Whether the suit schedule property is in a dilapidated condition as sated by the Plaintiffs ?

10. What are the other reliefs the plaintiffs are entitled to ?”

8. No doubt, the suit has been dismissed for not taking steps as against the first defendant who is arrayed as the third respondent in the above Application. However, in my considered view, it does not foreclose the rights of the present owner of the property viz., the Applicants who seek to implead themselves as the Plaintiffs in order to enable them to prosecute the suit. The question of limitation does not arise since the suit is pending and it is always open to the Applicants, if they are impleaded as plaintiffs to seek setting aside the order of dismissal of the suit for default as against the first defendant.

9. Admittedly, the defence put up by the third respondent is that he is an agreement holder who is possession of the suit property, having paid the entire sale consideration. Despite such a stand taken, it is an admitted fact



that the third respondent has not filed any suit for specific performance till date. No doubt he may be entitled to plead part performance invoking Section 53A of the Transfer of Property Act, 1882 to protect his possession. However, at the same time, it cannot preclude a lawful purchaser of the suit property from seeking to evict the third respondent from the suit property. Moreover, there are connected suits, one relating to the adjoining portion of the suit property which is under the occupation of a different tenant. In the said suit, the Applicants have already been impleaded and permitted to prosecute the suit since they have purchased the property from the plaintiffs therein.

10. In view of the above, I am of the considered opinion that the Applicants are entitled to implead themselves as plaintiffs and prosecute the suit. The fact that they have purchased the suit property for valuable sale consideration under registered sale deed definitely brings them within the ambit of “proper and necessary parties”. The plaintiffs who initially filed the suit have no subsisting interest in the suit property and as rightly contended by the learned counsel for the Applicants, they will have absolutely no



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interest to get along with the suit and the reliefs in the suit being substantial in nature, the Applicants should be permitted to implead themselves and prosecute the suit thereafter. No prejudice will be caused to the third respondent especially, since as against the third respondent the suit has been dismissed for non prosecution as on date and if and when any Application is taken out for setting aside the said order and seeking restoration on the suit against the first defendant, it would always be open to the third respondent/first defendant to defend the same in the manner known to law. This Application is allowed and Applicants are directed to be impleaded as plaintiffs. Amendment shall be carried out and the learned counsel for the plaintiffs shall file an amended copy of the plaint within two weeks from today.

14.06.2024

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P.B.BALAJI, J,

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Pre-delivery ORDER in
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in
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