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C.R.P.No.1201 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1201 of 2017
and C.M.P.No.5706 of 2017

1. P.Senthilkumar (died)

2. Neeladevi

3. Deivathal

4. Minor Survesh

5. Minor Narenkarthik

(Petitioners 2 to 5 brought
on record as LR's of the deceased Sole
Petitioner viz.P.Senthilkumar
vide Court order dated 11.01.2023
made in CMP.Nos.403, 406
and 408 of 2023 in
C.R.P.No.1201 of 2023)

.. Petitioners

Vs.

1. K.B.Govindasamy

2. M.Muthukumar

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decretal order of the II Additional District and Sessions Judge's Court at Tiruppur, dated 09.03.2017 in I.A.No.1164 of 2016 in O.S.No.459 of 2009 and pass such further or other orders as deemed fit and proper in the circumstances of the case.



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For Petitioners : Mr.Deeraj
for Mr.S.M.S.Shriram Narayanan
For Respondents
For R1 : Mr.K.S.Karthik Raja
For R2 : No appearance
Notice served

ORDER

This Civil Revision Petition has been filed as against the Fair and Decretal order of the II Additional District and Sessions Judge's Court at Tiruppur, dated 09.03.2017 in I.A.No.1164 of 2016 in O.S.No.459 of 2009, thereby allowing the petition to implead the petitioner as the second defendant in the suit.

2. The first respondent filed a suit in O.S.No.459 of 2009, for specific performance as against the second respondent, on the strength of the agreement for sale dated 18.02.2005 registered vide Document No.617 of 2005 executed by the second respondent herein in respect of the suit property. When the first respondent was examining the Sub-Registrar, Nallur as P.W.4, he produced a file relating to the registration of the Agreement for sale dated 18.02.2005. A perusal of the said Register revealed that the first respondent came to know that already there was an encumbrance dated 13.11.2009 and it was a conveyance deed executed by the Sub Court, Tiruppur, in favour of the petitioner herein. Therefore, the first respondent applied encumbrance certificate for the suit



property and came to understand that the father of the second respondent herein entered into an agreement for sale with the petitioner and on the strength of the agreement for sale, the petitioner filed a suit for specific performance in O.S.No.135 of 2008 and the same was decreed. In order to execute the same, the petitioner had also filed an execution petition in E.P.No.81 of 2008. In the execution petition, the Sub Court, Tiruppur had executed a sale deed in favour of the petitioner, on 06.11.2009.

3. That apart, the first respondent agreed to purchase the said property for the reason that though the suit property stands in the name of the father of the second respondent, his father was missing from the year 2001 and his whereabouts were not known. Therefore, the second respondent lodged a complaint and the same was registered under “Man Missing” in Crime No.342 of 2001. Thereafter, paper publication was made along with his photograph and on receipt of the death certificate of his mother, the first respondent had entered into an agreement for sale with the second respondent. Therefore, the specific case of the first respondent is that the second respondent colluded with the petitioner herein and had fabricated the agreement for sale, as if the father of the second respondent and the petitioner had entered into an agreement for sale. Thereafter, the petitioner had filed a suit in O.S.No.135 of 2008 and obtained a



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decree and registered the sale deed in his favour in E.P.No.81 of 2008.

Therefore, the petitioner is a necessary party to decide the suit.

4. Therefore, the Court below rightly allowed the application to implead the petitioner as second defendant to the suit and as such this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed.

5. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

09.02.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.



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To

The II Additional District and Sessions Judge's Court at Tiruppur.

C.R.P.No.1201 of 2017
and C.M.P.No.5706 of 2017

09.02.2023