



C.M.P(MD)No.4669 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Eleventh day of July Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice C. KUMARAPPAN

C.M.P(MD)No.4669 of 2023

in

S.A(MD)No.536 of 2017

G. SATHISH

... PETITIONER/PROPOSED RESPONDENT

Vs

1 N. ARUMUGAM

...RESPONDENT/ APPELLANT

2 RATHINAMALA

3 MANONMANI

4 RAJESWARI

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to implead the petitioner as 4th respondent in the above Second Appeal and thus render justice.

PRAYER IN S.A(MD)No.536 of 2017:

Prefer this Memorandum of Second Appeal against the Judgment and Decree dated 27.01.2017 passed in A.S.No.141 of 2013 on the file of II Additional Subordinate Judge, Trichy in modifying the Judgement and Decree dated 21.06.2013 passed in O.S.No.1671 of 2009 on the file of 1st Additional District Munsif, Trichy.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of



C.M.P(MD)No.4669 of 2023

M/S.V.MEENAKSHI SUNDARAM, Advocate for M/S.S.KISHORE, Advocate for the petitioner and of M/S.ARUMUGAM, Advocate on behalf of the Respondent No.1 and M/S.S.MEENAKSHISUNDARAM, Senior Counsel for the M/S.A.ARUL RAYAN, Advocate for the Respondents 2 to 4, the court made the following order:-

The brief facts which give rise to the instant revision petition is that, One Mr.N.Arumugam has entered into a sale agreement with the plaintiffs vide agreement dated 19.02.2007. In pursuance of the same, he filed a suit for specific performance in O.S.No.1671 of 2009. In which the Trial Court though not granted specific performance, decreed the suit for money decree. Against which, the plaintiffs have preferred an appeal in A.S.No.141 of 2013 in which the first appellate Court granted the decree for specific performance.

2. Aggrieved by the order of the first Appellate Court, the defendant has come up with the instant second appeal. In the second appeal, one Mr.G.Sathish, who is the brother's son of the defendant, has filed an application to implead himself as a party to the second appeal. His ground for seeking impleadment is that, though the suit property was purchased in the name of the appellant on 10.02.1987, the same is the joint family property, and that this petitioner become the owner of the suit property by virtue of oral partition, dated 16.01.2008. But curiously except his ipsi dixit in the affidavit, no document has been filed to substantiate such an oral partition.



C.M.P(MD)No.4669 of 2023

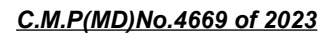
WEB COPY

3. In this case, the first respondent/defendant has not filed any counter statement. However, while arguing, the learned counsel for the first respondent submits that he has no objections for allowing this petition.

4. However, the respondents 2 to 4 have filed a counter statement disputing the oral partition and have also objected the impleading application, on the ground that if the petitioner has been impleaded, it will enlarge the scope of the suit and will divert the whole issue.

5. The learned counsel for the petitioner would fairly submits that the decision of the Full Bench of the Hon'ble of the Supreme Court referred in the case of Kasturi Vs Iyyamperumal and others reported in (2005) 6 SCC 733, for deciding an application under Order 1 Rule 10 (2) of C.P.C., a necessary ingredient is two test. The test is, whether is there a right to some relief against such party in respect of the controversies involved in the proceedings, or (2) whether no effective decree can be passed in his absence. The relevant portion of the above judgment is extracted hereunder:

16. That apart, from a plain reading of the expression used in sub-



<https://www.mhc.tn.gov.in/judis>



C.M.P(MD)No.4669 of 2023

in the instant suit for specific performance of the contract for sale.

WEB COPY

17....

18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos.1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

6. The learned petitioner counsel has also explained the ingredients required for impleadment by relying on the another decision of the Hon'ble Supreme Court in the case of Sumtibai and others vs Paras Finance Company reported in (2007) 10 SCC 82 and would submit that, as per this judgment, if there is a semblance of title over the subject matter of the suit property, then such person has right to be impleaded as the



party to the suit. The relevant portion of the order reads as under:

WEB COPY

9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi vs. Iyyamperumal and others* - (2005) 6 SCC 733. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no



C.M.P(MD)No.4669 of 2023

semblance of title and are mere busybodies or interlopers.

10...

11....

12....

13....

14. In view of the aforesaid decisions we are of the opinion that Kasturi's case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

7. Apart from that, the learned counsel for the petitioner would further explained to this Court by relying on yet another ruling in the case of Mumbai International Airport Private Limited Vs Regency Convention Centre and Hotels



C.M.P(MD)No.4669 of 2023

WEB COPY

Private Limited and others reported in (2010) 7 MLJ 153, wherein, both the above judgments have been distinguished by the Hon'ble Apex Court, and ultimately provided various options to the Court in Paragraph Nos.12.3 and 12.4 and 14 of the Judgment. In which the Hon'ble Apex Court has held that if the Court finds that any addition of party would alter or introduce new cause of action then such an application for impleading the party can be dismissed even if he is found to be proper party. The relevant portion is extracted hereunder:

12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a



C.M.P(MD)No.4669 of 2023

proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the



C.M.P(MD)No.4669 of 2023

WEB COPY

dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

13....

14. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. First respondent - plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for



C.M.P(MD)No.4669 of 2023

specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title, in the property in dispute.

8. Keeping in mind with the above principle, if we apply the ratio to the facts of the case in hand, even though the petitioner has pleaded a oral partition to the property, his long absence for a period of 15 years in approaching this Court, and that too filing an application for an impleadment at the stage of the second appeal causes a serious apprehension about the veracity of his case. Apart from that, even for argument sake, if we construe him as a proper party and implead him, then the suit will become more complex and the issue involved in the suit will be diverted into the title suit rather than specific performance.

9. The learned senior counsel for the respondents 2 to 4 would submit that the very application has been filed only to delay and prolong the proceedings. The very contention has rational. The learned senior counsel for the respondents 2 to 4 relied on



C.M.P(MD)No.4669 of 2023

the judgment of the Hon'ble Supreme Court in the case of Hari Mohan Sharma Vs Charanjeet Singh Rekhi reported in 2018 (6) CTC 686, wherein, the judgment of Hon'ble Supreme Court in the case of Kasturi Vs Iyyamperumal (cited supra) has also been discussed. The learned senior counsel would further submit that, if at all the plaintiffs are having any impediment in respect of not impleading the present petitioner, then it is their fate and they will fail in the execution petition and the same would in no way affect the present petitioner. This Court is in full agreement with the submission of the learned senior counsel for the respondents 2 to 4. The learned senior counsel for the respondents 2 to 4 also referred to the judgment of this Court in the case of Krishnan vs P.Palanisamy and others reported in 2010 (3) CTC 480.

10. Therefore, what emerges from these authorities is that, if the addition of the party alter the nature of the suit or introduce the new cause of action or enlarge the scope of the suit, then the Court must be slow in impleading the proposed parties. Therefore, this Court is of the firm opinion that the very filing of the application for impleading the petitioner is devoid of merits and cannot be entertained. Thus the court inclined to dismiss the petition.

11. At this juncture, the learned counsel for the petitioner seeks indulgence of

<https://www.mhc.tn.gov.in/judis>



C.M.P(MD)No.4669 of 2023

WEB COPY
this Court to protect the interest of the petitioner by giving a liberty to raise all the points, which are raised before this Court, to be raised again before appropriate forum. Such liberty is granted to the petitioner.

12. In the result, this civil miscellaneous petition stands dismissed with the above liberty. No costs.

sd/-
11/07/2023

/ TRUE COPY /

24/07/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

sn

TO

1.THE II ADDITIONAL SUBORDINATE JUDGE, TRICHY

2.1ST ADDITIONAL DISTRICT MUNSIF, TRICHY.

ORDER
IN
C.M.P(MD)No.4669 of 2023
in
S.A(MD)No.536 of 2017
Date :11/07/2023

RK /BUC(24/07/2023) 13P /3 C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023