



C.R.P.(MD).No.1374 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.08.2023

Pronounced on : 20.12.2023

CORAM :

THE HONOURABLE Mrs. JUSTICE **K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD).No.1374 of 2023
and C.M.P.(MD).No.6825 of 2023

M.D.Sheikfarith

...Petitioner

Vs.

1.Rafik Ali,
2.Abdul Ravooof.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 15.03.2023, passed in I.A.No.1 of 2020 in O.S.No. 945 of 2018 on the file of the Principal Sub Court, Karur.

For Petitioner : Mr.J.Jeyakumaran

For Respondent-1 : Mr.D.Anand Kumar

For Respondent-2 : No appearance

ORDER

This revision is preferred against the order dated 15.03.2023 passed in I.A.No.1 of 2020 in O.S.No.945 of 2018 on the file of the Principal Sub Court, Karur.

2.According to the revision petitioner, the first respondent/plaintiff filed a



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suit in O.S.No.945 of 2018 against the second respondent/defendant for specific performance. In the plaint, it is averred that the first respondent/plaintiff entered into a registered Sale agreement with the second respondent/defendant on 13.06.2014. The sale consideration was fixed at Rs.9 lakhs and paid a sum of Rs.8 lakhs as advance and agreed to pay the balance sale consideration of Rs. One lakh within a period of 2 years. Since the second respondent/defendant herein failed to perform his part of the contract, the first respondent/plaintiff filed the present suit for specific performance.

3.The second respondent/defendant entered appearance before the Trial Court and failed to file his written statement. Hence, an *ex parte* order was passed against the second respondent/defendant on 26.11.2019.

4.While so, the revision petitioner filed a petition under Order I Rule 10 of C.P.C in I.A.No.1 of 2020 to implead himself as a necessary party in the suit. Even in the said Interlocutory Application, the second respondent herein failed to appear and file his objection. The first respondent/plaintiff alone filed his counter by resisting the claim of the petitioner.

5.It is submitted that the suit property was purchased by one Abdul



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Qudhoose Rawther through registered Sale deeds dated 09.07.1934 and 15.02.1941. After the demise of Abdul Qudhoose Rawther, his son Mohammed Hussain enjoyed the suit property. Thereafter, the said Mohammed Hussain died leaving behind his three sons, viz., Anwar Ali, Mohammed Ibrahim, Abdul Kader Jailani as his legal heirs, who became the absolute owners of the entire property. All the three sons had 1/3 share in the entire property.

6.Hence, the revision petitioner entered into a sale agreement with Anwar Ali on 01.02.2017 in respect of his 1/3 share. As per the sale agreement, the revision petitioner paid a sum of Rs.6 lakhs as advance and agreed to pay the balance consideration of Rs.1 lakh within a period of one year. The said sale agreement was registered on 01.02.2017.

7.Since the said Anwar Ali failed to perform his part of the contract, the revision petitioner filed a suit against Anwar Ali, Mohammed Ibrahim, Abdul Kader Jailani in O.S.No.46 of 2018 on the file of the District Sub Court, Karur. The above three persons though made appearance, failed to file their written statement and hence, an *ex parte* decree and judgment was passed on 04.06.2020.



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WEB COPY 8. Thereafter, the revision petitioner filed the Execution Petition in E.P.No.

62 of 2021 and deposited the balance sale consideration of Rs. One lakh seeking to execute the Sale deed in his favour. The said Execution Petition was allowed on 16.11.2022 and the sale deed was executed by the Court in favour of the revision petitioner. Hence, the revision petitioner became the absolute owner of the property. After execution of this sale deed, the property tax and house tax receipts were issued in the name of the revision petitioner and he had also obtained a separate Patta in Patta No.866 in his name. In the mean time, the revision petitioner came to understand that one Abdul Ravooof/second respondent had executed a sale agreement in favour of the first respondent herein relating to the very same property. The revision petitioner came to know about the collusive suit filed by the respondents herein in O.S.No.945 of 2018, on the file of the Principal Sub Court, Karur.

9. Hence, the revision petitioner lodged a complaint before the Crime Branch, Karur, for the offences punishable under Section 406, 420, 423 and 465 of I.P.C and an F.I.R was registered against the above persons. The revision petitioner filed an application in I.A.No.1 of 2020 seeking to implead himself as a necessary party in the suit. However, the Trial Court dismissed his application.



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Aggrieved by the same, the present revision is preferred.

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10. On the other hand, the learned counsel for the first respondent would contend that the second respondent/defendant entered into a sale agreement on 13.06.2014 with the first respondent and since the second respondent failed to perform his part of the contract, the first respondent filed the above suit for specific performance. It is submitted that the suit property was settled in favour of the second respondent on 21.09.2011. It is further submitted that on 01.02.2017, Anwar Ali never executed any sale agreement in favour of the Revision petitioner.

11. The learned counsel would contend that to invoke Order I Rule 10 of C.P.C, the guidelines given by the various High Courts and the Supreme Court have to be followed. The learned counsel would submit that a third party cannot be considered as a necessary party in deciding the main issue framed in the suit. A person is not to be added as a defendant merely because he/she would be incidentally affected by the judgment. He would further submit that the necessary parties are only the parties to the contract or the parties claiming under them or a person who purchased the contracted property from the vendor



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with or without notice of the contract. The person who claims independent title and possession adversely to the title of the vendor is not a necessary party, since an effective decree can be passed in his absence and no relief can be claimed against such a party. The above application is filed by the revision petitioner in collusion with the second respondent in order to defraud the first respondent.

12.The learned counsel would further submit that the judgment and decree passed in O.S.No.46 of 2018 would not bind upon the first respondent/plaintiff. Hence, the Trial Court has rightly dismissed the above application which calls for no interference. In support of his contention, he relied upon the following judgments of the Hon'ble Supreme Court in the cases of *Sudhamayee Pattnaik and others vs. Bibhu Prasad Sahoo and others* reported in 2022 SCC Online SC 1234, *Anil Kumar Singh vs. Shivnath Mishra @ Gadasa Guru* reported in (1995) 3 SCC 147 and *Kasturi vs. Iyyamperumal and others* reported in (2005) 6 SCC 733 and the Judgment passed by this Court in the case of *Antony Devaraj and another vs. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula and others* reported in 2003 SCC Online Mad 875.



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13.Heard both sides and perused the records.

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14.According to the revision petitioner, the suit property was purchased by one Abdul Qudhoose Rawther, through a registered sale deed dated 09.11.1934 and 15.02.1941. After his demise, his son Mohammed Hussain enjoyed the property without any hindrance. Thereafter, the said Mohammed Hussain died and his three sons, viz., Anwar Ali, Mohammed Ibrahim, Abdul Kader Jailani became the absolute owners of the entire property. Thereafter, the revision petitioner entered into a sale agreement with Anwar Ali on 01.02.2017 in respect of his 1/3 share alone. Since the said Anwar Ali failed to perform his part of the contract, the revision petitioner filed O.S.No.46 of 2018 on the file of the Additional Sub Court, Karur. On 04.06.2020, an *ex parte* decree was passed and the revision petitioner filed E.P.No.62 of 2021 for execution of sale deed on 16.11.2022. The Trial Court executed the sale deed in favour of the revision petitioner. Hence, the revision petitioner became the absolute owner of the property. Thereafter, the revision petitioner came to understand that collusive suit was filed by the first respondent herein in O.S.No.945 of 2018 on the file of the Principal Sub Court, Karur, which is the present suit in respect of the same property. In the above suit, he filed an application in I.A.No.1 of 2020 to implead him as a necessary party which was dismissed by the Trial Court.



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15. According to the revision petitioner, the averments made in the plaint in O.S.No.945 of 2018 are false. The contention of the plaintiff in the plaint that Mohammed Hussain had purchased the suit property on 21.09.2011 and executed a gift deed to the second respondent who entered into a sale agreement with the first respondent/plaintiff on 13.06.2014 is utter false. He would submit that the property was purchased by Abdul Quthoose Rawther, father of Mohammed Hussain on 09.11.1934 and 15.02.1941 and after his demise, Mohammed Hussain enjoyed the property and thereafter, Mohammed Hussain died and his sons Anwar Ali, Mohammed Ibrahim and Abdul Kader Jailani alone became the absolute owners of the suit property. The said Mohammed Hussain had no legal right to execute the gift deed in favour of his grandson viz., Abdul Ravoof who is the second respondent herein. Hence, it is necessary to implead himself in the above suit, otherwise, he will be put to irreparable loss and hardship. However, the Trial Court dismissed the interlocutory application without considering the contention of the Revision petitioner.

16. At the outset, it is required to be noted that the revision petitioner filed the application under Order I Rule 10 of C.P.C, praying to implead himself in the suit filed by the respondents. In this case, since the suit is based on the agreement of sale sought to have been executed between the first and second



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respondent herein, the interest in the property acquired by the revision petitioner by virtue of the decree passed by the Court is not a matter arising out of or in respect of the some act or transaction or series of acts or transactions in relation to the claim made in the suit. The question is whether a person who has got his interest in the property declared by an independent decree, but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before this Court is that, in a suit for specific performance, whether the vendor had executed the documents and whether the conditions prescribed in the provisions of the Specific Relief Act, 1963, have been complied with for granting the relief of specific performance. Since the revision petitioner is not a party to the agreement of sale, it cannot be said that without his presence, the dispute as to the specific performance cannot be determined. Therefore, the revision petitioner is not a necessary party.

17.In *Anil Kumar Singh* (supra), the Hon'ble Supreme Court has held that Order I Rule 3 of C.P.C is not applicable to the suit for specific performance case. Admittedly, the revision petitioner was not a party to the contract. Therefore, the revision petitioner is neither a necessary nor a proper party to adjudicate upon the dispute arising in the suit. The remedy available to the



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Revision petitioner is to file a separate suit. Therefore, the Trial Court has rightly dismissed the application filed by the revision petitioner.

Accordingly, this Civil Revision Petition is dismissed by confirming the order of the Trial Court. Connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

20.12.2023

Internet : Yes/No
Index: Yes/No
apd

To
The Principal Sub Court, Karur.

K.GOVINDARAJAN THILAKAVADI

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