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CRP(MD).No.1654 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).Nos.1654 and 1655 of 2018

C.R.P(MD).No.1654 of 2018

Solaiyan .. Petitioner/2nd Respondent/2nd Defendant

Vs.

1.Balasubramanian ...1st Respondent/Petitioner/Plaintiff
2.Kavitha ... 2nd Respondent/1st Petitioner/1st Defendant

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 23.02.2017 in I.A.No.265 of 2015 in O.S.No.124 of 2003 on the file of the Subordinate Court, Pudukkottai.

. For Petitioners : Mr.S.Prabha
for Mr.RMS.Sethuraman
For Respondents : Mr.S.Sivakumar (for R1)
No appearance (for R2)

C.R.P(MD).No.1655 of 2018

Solaiyan .. Petitioner/3rd Respondent/3rd Respondent

Vs.

1.Balasubramanian ... Respondent/Petitioner/Plaintiff
2.Kavitha ... 2nd Respondent/1st Respondent/ Defendant
3.The Managing Director,
Arulmigu Veeramakaliamman Thirukoil,



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Aranthangi & Taluk, Pudukkottai District.

.. 2nd Respondent/2nd Respondent/3rd Party

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PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.02.2017 in I.A.No.266 of 2015 in O.S.No.125 of 2003 on the file of the Subordinate Court, Pudukkottai.

For Petitioners : Mr.S.Prabha
for Mr.RMS.Sethuraman
For Respondents : Mr.S.Sivakumar (for R1)
No appearance (for R2)
Mr.G.Mathavan (for R3)

COMMON ORDER

The present revision petitions have been filed by the proposed party in two specific performance suits in O.S.Nos.124 and 125 of 2003 challenging the allowing of the applications in I.A.Nos.265 and 266 of 2015 and impleading the proposed party as the second defendant in O.S.No.124 of 2003 and as the third defendant in O.S.No.125 of 2003.

2. One Balasubramanian had filed O.S.No.124 of 2003 and O.S.No.125 of 2003 before the Subordinate Court, Pudukkottai, seeking specific performance of an agreement entered into by him with the first defendant, namely, Kavitha relating to two different survey numbers.



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Pending suit, the plaintiff had filed I.A.No.265 of 2015 to implead one Solaiyan as the second defendant and I.A.No.266 of 2015 to implead the same person as the third defendant in another suit. The said applications were allowed. Challenging the same, the newly impleaded party had filed these two revision petitions.

3. According to the learned counsel appearing for the revision petitioner, he had filed a suit for specific performance as against the plaintiff in the suits and the Court has executed a sale deed in his favour. Therefore, he is being the owner of the property and not a party to the agreement between Balasubramanian and Kavitha, not a necessary party to the present suits. The learned counsel for the petitioner has further contended that without setting aside the decree passed in the other suit, he cannot be impleaded in the present suits for partition.

4. Per contra, the learned counsel appearing for the respondent/plaintiff had contended that the first defendant in the suit had created a collusive agreement dated 13.01.2000 with the proposed party and the proposed party had managed to obtain an ex-parte decree on 28.02.2005. Based upon the said ex-parte decree, the sale deed has also



been executed in O.S.No.127 of 2004 on 28.06.2007. Therefore, according to the plaintiff, the proposed party has obtained a sale deed through Court while the present suits in O.S.No.124 of 2003 and O.S.NO.125 of 2003 were pending. Therefore, according to the learned counsel for the respondent/plaintiff, the newly impleaded party is a necessary party.

5. I have carefully considered the submissions made on either side.

6. The revision petitioner, who has been newly impleaded, is said to have entered into an agreement with the plaintiff on 13.01.2000 and based upon the said agreement, the revision petitioner has filed O.S.No.127 of 2004 and an ex-parte order was passed in the said suit on 28.02.2005. The present suits have been filed in the year 2003. Therefore, it is clear that the newly impleaded party had approached the civil Court for specific performance, while the present suits namely O.S.No.124 of 2003 and O.S.NO.125 of 2003 were pending. That apart, the sale deed has been executed based upon the ex-parte decree in favour of the proposed party only on 28.06.2007. It is clear that the said



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Solaiyan is a person claiming under the first defendant through a contract, which is alleged to have been entered into between the plaintiff and the said Solaiyan prior to the suit sale agreements. Therefore, in view of Section 19 (b) and (c) of the Specific Relief Act, the revision petitioner is not only a proper party, but also a necessary party in the present suits. Therefore, I do not find any illegality or irregularity in the order passed by the trial Court. Accordingly, these Civil Revision Petitions stand dismissed. Considering the fact that the suits are pending from the year 2003, there shall be a direction to the learned Subordinate Judge, Pudukkottai, to dispose of the suits in O.S.Nos.124 and 125 of 2003 on or before **22.12.2023**. No costs.

20.02.2023

Index : Yes / No

Internet : Yes / No

Rmk

To
The Subordinate Judge, Pudukkottai.



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R.VIJAYAKUMAR ,J.,

Rmk

Order made in
CRP(MD).Nos.1654 and 1655 of 2018

Dated:
20.02.2023