



WEB COPY



CRP (MD) No.2140 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	08.08.2023
Pronounced on	07.09.2023

CORAM:

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

CRP (MD) No.2140 of 2022

and

CMP(MD)No.9901 of 2022

1.Minor Nagulvarshan

2.Minor Mukulvarshan

Both minors are represented by
Mother-Guardian Suganya

... Petitioners

Vs.

1.S.P.Selvaraj

2.R.Nallusamy

3.Chitra

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2020 in O.S.No.48 of 2015, dated 17.06.2022, on the file of the Additional Sub Court, Karur.

For Petitioner : Mr.K.Suresh



WEB COPY



CRP (MD) No.2140 of 2022

For R1 : Mr.I.Vel Pradeep

For R2 & R3 : No appearance

ORDER

This civil revision petition is filed against the fair and decretal order passed in I.A.No.1 of 2020 in O.S.No.48 of 2015 dated 17.06.2022 on the file of the Additional Sub Court, Karur.

Facts:-

2. The suit in O.S.No.48 of 2015 was filed by the respondent/plaintiff for the following reliefs:-

(a) directing the first defendant to execute the sale deed in favour of the plaintiff in pursuance of the suit sale agreement dated 08.02.2013, after receipt of the balance sale consideration within a period fixed therefor by the Court, failing which, permitting the plaintiff to get the sale deed be executed and get possession of the suit property through process of Court; and,

(b) in the event of this Court comes to the conclusion that the plaintiff is not entitled for specific performance of the suit contract of sale dated 08.02.2013, then pass an alternative remedy directing the first defendant to



refund the advance amount of Rs.2,50,000/- along with interest at the rate of 9% per annum from 08.02.2013 till date of realization of the entire decree amount; and,

(c) creating a charge over the suit property till the realization of the entire decree amount; and,

(d) directing the second defendant to divide the suit properties into 2 equal share by metes and bounds with reference to good and bad nature of the soil and to allot one such share to the plaintiff and put him in separate possession over the same; and

(e) granting such other and further reliefs.

During the pendency of the suit, the revision petitioners/third parties took out an application in I.A.No.01 of 2020 to implead themselves as necessary parties in above suit. In the petition averments, the revision petitioners have submitted that the suit property is an undivided property. While so, the petitioners came to know about the sale agreement, dated 08.02.2013, executed by the second defendant in favour of the first defendant. Since the suit properties are ancestral properties, the petitioners herein have 1/6th share in the suit properties. Therefore, they are necessary parties in the suit to



preserve their right of share in the suit property. The said petition was resisted by the plaintiff by stating in their counter statement that with an intention to deprive the rights of the plaintiff in the suit properties, the present petition is filed and the petitioners have no share in the suit property muchless than 1/6th share and the claim of the petitioners that the suit agreement is not binding on them, is incorrect. The trial Court after considering the averments made in the petition and in the counter affidavit and also considering the arguments advanced by the respective counsel, dismissed the above application by stating that it is not established by the petitioners that the suit properties are the ancestral properties of the petitioners and therefore, they are not necessary parties to the suit. Aggrieved by this, the petitioners have preferred the present revision petition.

3. The learned counsel appearing for the revision petitioners would submit that without considering the minor share in the suit property as per Section 6 of the Hindu Succession Act, the trial Court has erroneously dismissed the above application. It is further submitted that if the petitioners are not impleaded in the suit, they will be put to irreparable loss. The first



respondent/plaintiff has no right to execute any sale agreement including the share of the revision petitioners and the first respondent cannot get a decree behind the back of the revision petitioners. It is further submitted that the suit is not only for the relief of specific performance, but also for the relief of partition and in such circumstances, all the sharers should be made as parties to the suit. Therefore, the trial Court without considering the above facts simply dismissed the application by stating that the said application is filed in collusion with the defendants/respondent 2 and 3 at belated stage. It is further submitted that by impleading the revision petitioners will be beneficial for the first respondent/plaintiff to have a binding adjudication and only if the revision petitioners are made as parties in the suit, it can be ascertained whether they have any share in the suit property or whether the suit agreement is binding upon revision petitioner.

4. On the other hand, the learned counsel for the first respondent would submit that the third party cannot be impleaded as party to the suit for specific performance of contract for sale, who is not party to the agreement for sale. It is further submitted that the revision petitioners based their claim



on independent title of contracted property and the Court cannot enlarge the scope of suit for specific performance of agreement for sale by impleading such persons. He would further submit that the petitioners have right to resist execution of decree in order to preserve their title and interest. Therefore, it is submitted that the trial Court has rightly dismissed the application, which requires no interference. To support his contention, he has relied upon the decision reported in *2010 0 Supreme (Del) 5*.

5. Heard on both side and records perused.

6. The first respondent/plaintiff filed the above suit claiming that the suit properties originally belonged to the defendants. The first defendant entered into an agreement for sale in respect of his undivided half share in the suit property with the plaintiff on 08.02.2013 agreeing to sell the suit properties either to the plaintiff or to the person who is shown by the plaintiff. The said agreement was reduced into writing and was signed by the first defendant and the plaintiff and also attested by witnesses. The sale consideration was fixed at Rs.3 lakhs. In pursuant to the said agreement, the



first defendant received an advance amount of Rs.2,50,000/- from the plaintiff on 08.02.2013 and agreed to execute the sale deed free from all encumbrances and deliver the properties in clear physical features and the period for completion of sale is two years from 08.02.2013 and the plaintiff should pay the balance of sale consideration of Rs.50,000/- and the first defendant should perform his part of contract by executing the sale deed after receiving the balance sale consideration. However, when the plaintiff approached the first defendant to execute the sale deed in his favour, the first defendant was evading to perform his part of contract. Hence, the plaintiff was constrained to file the above suit for specific performance and for partition dividing the suit properties into half shares and allow one such share to the plaintiff and for alternative relief.

7. During the pendency of the above suit, the revision petitioners moved an application in I.A.No.1 of 2020. Since the defendants failed to maintain the mother of minor petitioners, there was some misunderstanding between the mother of minor petitioners and the first defendant. Thereafter, the first defendant chased out the mother of the minor revision petitioners



from the matrimonial home and fraudulently executed a sale agreement dated 08.02.2013, which was brought to the knowledge of the mother of the minor petitioners through third parties. The above sale agreement was executed in order to defraud 1/5th share of the minors in the suit properties. Hence, they prayed for to implead them as necessary parties in the suit. The above petition was dismissed by the trial Court, against which, the present revision petition is preferred.

8. The point for consideration is that whether in a suit for specific performance of a contract for sale of a property, instituted by the purchaser against the vendor, a stranger or third party to the contract claiming to have an independent title and possession over the contracted property, is entitled to be added as a party in the said suit?

9. This aspect has been thoroughly discussed in the decision case referred by the learned counsel for the first respondent in ***Shri Meer Singh Vs Shri Amar Singh*** reported in ***2010 0 Supreme (Del)5***, in which, it is held as follows:-

6. Order 1 Rule 10 sub-rule (2) CPC reads as follows:-



"(2) Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

7. Thus, by virtue of the abovesaid provision of law, the court at any stage of the proceedings can order either upon or without the application of either party and on such terms as may appear to the court to be just to add the name of a person whether as plaintiff or defendant, if the court is of the view that the presence of such persons before the court is necessary in order to enable it to effectively and completely adjudicate upon and settle all the questions involved in the suit.

8. Plaintiff has filed a suit for specific performance of agreement to sell dated 26.11.2005 executed by the defendant in his favour for a total consideration of Rs.28,75,616/-. Plaintiff claims that he has paid a sum of Rs.6,50,000/- at the time of execution of the agreement to sell by way of a receipt. The defendant had agreed to sell the suit property to the plaintiff claiming himself to be the Bhumidar/absolute owner, occupier and in peaceful physical possession of the same.

9. The applicants have claimed their rights in the suit property as coparceners. They are stranger to the impugned agreement to sell. The question of jurisdiction of the court to



invoke order 1 Rule 10 CPC to add person who has not been made a party in the suit by the plaintiff, not arise unless the party proposes to be added, has direct legal interest in the dispute involved in the suit. A person can be legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally. In a suit for specific performance, the court has to see that plaintiff has a right to claim the relief as claimed in the suit as against the applicants relating to the same subject matter i.e. the agreement to sell. The issue which is involved in a suit for specific performance, which needs to be adjudicated upon by the court is the enforceability of the contract entered into between the purchase and the vendor for sale of the contracted property and whether the vendor was ready and willing to perform its part of contract and whether the purchaser under the circumstances of the case is entitled to a decree of specific performance for a contract of sale against the vendor.

10. The applicants admittedly have based their claim on independent title of the contracted property. Therefore, if the applicants are allowed or are added or impleaded in the suit as defendants, the scope of the said specific performance of the contract for sale would be enlarged from the suit for specific performance to a suit for title and possession, which is not permissible in law. Such addition of their names would lead to a complicated litigation and the court would have to go into the trial and decision of serious questions, which would be totally outside the purview of the suit and would also unnecessary prolong the adjudication of the case, as



addition of such like persons in the array of defendants could continue without a final decision of the suit.

11. The applicants, under the circumstances, being the stranger to the contract, cannot be allowed to be added so as to change the nature of suit from specific performance to a suit of different character, may be suit for title and possession. What is important for the court to look into the present suit is lis between the parties and the court is not empowered to decide if the applicants have acquired any title in the contracted property because, that is not the germane for just decision of this case i.e. for specific performance of the contract for sale.

10. In 'Kasturi vs. Iyyamperumal, (2005) 6 SCC 733', in similar circumstances, wherein a suit for specific performance of a contract was filed by the applicant Kasturi against respondents No.2 and 3 for enforcement of agreement for sale, respondents No.1, 4 to 11 filed applications claiming independent title and possession over the contracted property, to get themselves added in the suit as defendants, the Apex Court while allowing the appeal dismissed the applications for impleadment as defendants under order 1 Rule 10 CPC, Supreme Court considered the scope of Order 1 Rule 10 (2) CPC in extensor and observed:-



WEB COPY

"7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.

11. As noted herein earlier, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all. Lord Chancellor Cottenham in *Tasker v. Small* 1834 (40) ER 848 made the following observations: (ER pp.850-51)



WEB COPY

"It is not disputed that, generally, to a bill for a specific performance of a contract of sale, the parties to the contract only are the proper parties; and, when the ground of the jurisdiction of Courts of Equity in suits of that kind is considered it could not properly be otherwise. The Court assumes jurisdiction in such cases, because a Court of law, giving damages only for the non-performance of the contract, in many cases does not afford an adequate remedy. But, in equity, as well as at law, the contract constitutes the right, and regulates the liabilities of the parties; and the object of both proceedings is to place the party complaining as nearly as possible in the same situation as the defendant had agreed that he should be placed in. It is obvious that persons, strangers to the contract, and, therefore, neither entitled to the right, nor subject to the liabilities which arise out of it, are as much strangers to a proceeding to enforce the execution of it as they are to a proceeding to recover damages for the breach of it."[Emphasis supplied]

13. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

15. In the case of *Vijay Pratap v. Sambhu Saran Sinha* (1996) 10 SCC 53, this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit.....



WEB COPY

16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party.....

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 litis 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....."

11. Therefore, applying the principles laid down in the above decisions, a stranger to the contract cannot be allowed to be impleaded as a defendant in a suit for specific performance, which would change the nature of the suit. The revision petitioners are neither necessary nor proper party to be added in the present suit. Besides, the plaintiff cannot be forced to add party, against whom, he does not want to fight, unless it is a completion of the rule of law. However, passing of a decree for specific performance of the contract for sale, would not affect the right, title or interest of the revision petitioners in respect of the contracted property. A decree if passed in the



CRP (MD) No.2140 of 2022

suit would not be binding on them and the revision petitioners would be at liberty either to obstruct the execution in order to protect their title and possession by taking recourse to the relevant provision of CPC, if they are available to them, or, file an independent suit for declaration and title of possession against the parties to the suit. If a decree for specific performance of the contract is passed in favour of the plaintiff and the sale deed is executed, he will have to sue the applicants for taking possession, if they are in possession of the decretal property.

12. Hence, I find no merits in the civil revision petition and accordingly, the same is dismissed. No costs.

07.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To
The Additional Subordinate Judge,
Karur.

15/16



WEB COPY



CRP (MD) No.2140 of 2022

K.GOVINDARAJAN THILAKAVADI

cp

order made in
CRP (MD) No.2140 of 2022

07.09.2023