



C.R.P.(MD)No.537 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 12.07.2023

Delivered on : 11.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.537 of 2017

and

C.M.P.(MD)No.2482 of 2017

N.Sathish

... Petitioner / 3rd Party / Revision petitioner

Vs.

1.N.Ramadass @ Ramalingam ...1st Respondent / 1st Respondent/ Plaintiff

2.M.Subramaniam

3.S.Nirmala

... Respondents 2 & 3/Respondent 2 & 3 /

Defendants 1 & 2

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order, dated 21.09.2016, made in I.A.No. 176 of 2015, in O.S.No.752 of 2008, on the file of the III Additional District Munsif, Tiruchirappalli.

For Petitioner : Mrs.AL.Gandhimathi, Senior Counsel

For Respondents : Mr.G.S.Asok Adhithyan for R1

: Ms.J.Anandhavalli for R2 & R3



C.R.P.(MD)No.537 of 2017

WEB COPY

ORDER

The revision petitioner herein is the petitioner/third party, the first respondent is the first respondent / plaintiff and the respondents 2 and 3 are the respondents 2 & 3 / defendants 1 and 2 before the trial Court. The revision petitioners filed the instant Civil Revision Petition against the order of dismissal passed by the learned District Munsif cum Judicial Magistrate, Tiruchirappalli, in an application for impleading the revision petitioner as third defendant in the suit.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The short facts, which give rise to the instant Civil Revision Petition, are as under:

The plaintiff / first respondent has filed the suit against the respondents 2 and 3 / defendants, for declaration, to declare the sale deed executed by the second and third respondents as null and void. According to the plaint averments, it appears that the plaintiff along with his legal



C.R.P.(MD)No.537 of 2017

heirs, have given a registered power in favour of the first defendant, under document No.1108/2004, dated 24.05.2004. According to the first respondent / plaintiff, the said general power of attorney was subsequently revoked on 07.06.2007 under document No.1604/2007 dated 19.06.2007, and that such factum was duly intimated to the first respondent. However, subsequent to the revocation of the power deed, the first defendant fraudulently sold the suit property in favour of his wife, who is the second defendant / third respondent. Hence, according to the first respondent / plaintiff, the sale transaction between the second and third respondents, namely the defendants 1 & 2, are sham and nominal and not binding upon him. Hence, he came forward with the suit.

4. In the said suit, the respondents 2 and 3 / defendants 1 & 2 have filed a written statement disputing the contention of the first respondent / plaintiff. While so, the petitioner herein, who is a third party to the suit, has come up with an application that the first respondent / plaintiff, subsequent to the revocation of the earlier power of attorney has executed another power of attorney on 19.09.2008 in favour of one T.A. Punithan and that the said Punithan has executed a sale deed in his name



C.R.P.(MD)No.537 of 2017

(petitioner), on 27.08.2012, and that by virtue of the said sale, he became the owner of the suit property and that he has been in the possession and enjoyment over the suit property. Hence, he came up with an application to implead himself in the above suit, on the ground that, he is a necessary and proper party. He would further submit that the impleadment would avoid the multiplicity of proceedings.

5. The said application was stoutly objected by the second respondent / first defendant. He has disputed the power of attorney, dated 19.09.2008, and has also disputed the sale in the name of the petitioner herein. Similarly, the first respondent / plaintiff has also filed a counter statement, contending that the said Punithan has colluded with the petitioner herein as well as with Sub Registrar, Srirangam. He would further submit that for the such execution of the sale deed, no sale consideration was paid to him.

6. Considering the submissions of all the parties, the learned trial Judge, has rejected the impleading application of the petitioner on the ground that, the impleadment of the petitioner will in no way helpful for the



C.R.P.(MD)No.537 of 2017

decisions of the issues involved in the instant suit and that he would be neither necessary party nor proper party.

7. Aggrieved with the above order, the petitioner has come up with the instant Civil Revision Petition.

8. The learned Senior Counsel appearing on behalf of the petitioner would submit that the petitioner is the subsequent purchaser of the suit property, therefore, he would become necessary and proper party. She would further submit that when the petitioner is having interest over the suit property, his impleadment would advance the cause of justice, hence, prayed to allow this application.

9. Per contra, the learned counsel for the respondents 2 and 3 would vehemently submit that in a suit for declaration, to declare sale deed, dated 08.10.2007, which was entered between the respondents 2 and 3/ defendants is null and void. The present petitioner, who is a third party to the said transaction is no way a necessary party. He would further submit that the impleadment of the petitioner herein would in no way useful to



C.R.P.(MD)No.537 of 2017

decide the pending suit. If at all the petitioner wants to have any relief, he should have instituted a separate suit and he cannot have any relief in the instant suit.

10. The learned counsel for the respondents 2 and 3/ defendants 1& 2 have relied upon the following judgments:

(i) ***2012-8-SCC-384 (Vidur Impex and Traders Private Limited V. Tosh Apartments Private Limited)***

(ii) ***2001-1-MLJ-101 (Bakthavatsalam V. Anjapuli)*** and

(iii) ***1997-2-LW-691 (R.R.Square by Partner Ramachand Rao V. Shobalatha Debi)***

11. I have given my anxious consideration to the either side submissions.

12. It is an admitted case that the petitioner herein purchased the suit property on 27.08.2012, based upon the power of attorney executed in the name of one T.A.Punithan, which is dated 19.09.2008. Thus, the sale deed, dated 27.08.2012, stands in the name of the present petitioner, which has been filed along with typed set of papers.



C.R.P.(MD)No.537 of 2017

WEB COPY

13. From the perusal of the said sale deed, it appears that the petitioner herein has purchased the suit property for Rs.89,50,000/-. Out of the total extend of 3 Acres 33 ½ cents in old T.S.No.1292 and the current Sub Division No.1292/3, the petitioner herein purchased an extend of 3 acres 20 ½ cents. However, the subject matter of the suit is 1 acre under the suit schedule, under two different documents.

14. Furthermore, according to the petitioner's sale deed, the Survey Number is 1292/3. Whereas, in the suit property it is mentioned as 1292/2. Even for arguments sake, if we construe that the suit property is part of the property purchased by the petitioner, still issue involved in the instant suit is as to whether the sale deed stands in the name of the respondents 2 and 3 / Defendants 1 & 2 are valid and binding. As such, the issues are *inter se* between the respondents 1 to 3.

15. At this juncture, it is relevant to mention that the judgment referred by the learned counsel for the respondents 2 and 3, reported in **2012-8-SCC-384 (Vidur Impex and Traders Private Limited V. Tosh**



C.R.P.(MD)No.537 of 2017

Apartment Private Limited) . The relevant portion of the judgment is as follows-

41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is



C.R.P.(MD)No.537 of 2017

above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.”

16. He would also rely upon the judgment of this Court reported in **2001-1-MLJ-101 (Bakthavatsalam V. Anjapuli)**. The relevant portion of the judgment is as follows-

“10. It is clear that a person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle and questions involved in the suit. If the question at issue between the parties can be worked out without any one else being brought in, the stranger should not be added as a party. In the light of the language used in Order 1, Rule 10(2) of C.P.C. as well as various decisions and in the light of factual position in our case that preliminary decree has



C.R.P.(MD)No.537 of 2017

WEB COPY

already been passed and application for passing of final decree is pending before the Court below, I am of the view that purchasers of properties during the pendency of the suit are neither necessary nor proper parties inasmuch as they would be bound by the decree in the suit in view of the principle enunciated in Section 52 of the Transfer of Property Act. I hold that the parties sought to be impleaded as defendants in the suit and respondents in the final decree application are neither necessary nor proper parties. I have already stated that the alienees respondents 4 to 6 herein are not want to be made a party and they are willing to take the risk. It is settled law that any alienation subsequent to the filing of the suit is hit by the doctrine of lis pendens. The subsequent purchasers are aware of the proceedings and they are definitely bound by the decision in the suit and the proceedings.”

(Emphasis supplied by this Court)

17. He would further rely upon the judgment of this Court reported in **1997-2-LW-691 (R.R.Square by Partner Ramachand Rao V. Shobalatha Debi)**. The relevant portion of the judgment is as follows-

“12. The principle for impleading a third party to a proceeding is avoidance of multiplicity of proceedings and hence the Court has no jurisdiction to add a party, unless it is



C.R.P.(MD)No.537 of 2017

WEB COPY

a necessary or proper party. A necessary party is one without whom no order can be made effectively and a proper party is one whose presence is necessary for a complete and final decision on the questions involved in the proceedings. If the question at issue can be worked out without any one being brought in, a stranger, should not be added to the litigation. The eventual interest of the party in the fruits of the litigation cannot be held to be a true test of impleading the parties according to the Code of Civil Procedure.”

(Emphasis supplied by this Court)

18. It is pertinent to mention here that in the judgment reported in **2012-8-SCC-384**, cited supra the Hon'ble Supreme Court referred to the judgment of the ***Kasturi v. Iyyamperumal***, reported in **2005-6-SCC-733**, wherein after elaborate discussion the impleadment of third party was rejected on the ground that such impleadment will enlarge the scope of the suit. However, in a latest judgment of the Hon'ble Supreme Court in the case of ***Hari Mohan Sharma Vs Charanjeet Singh Rekhi*** reported in **2018 (6) CTC 686**, the judgment ***Kasturi Vs Iyyamperumal*** (cited supra) has also been discussed. The relevant portion of the judgment is extracted hereunder:



C.R.P.(MD)No.537 of 2017

WEB COPY

16. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 of the 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. **In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff/appellant on one hand and Respondent Nos. 2 & 3 and Respondent Nos. 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of the respondent Nos.1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, the respondent Nos.1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.**



C.R.P.(MD)No.537 of 2017

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.

(Emphasis supplied by this Court)

In the above judgment, the Apex Court has ultimately held that if the impleadment of the third party is enlarging the scope of the suit, then the Court must be slow in impleading the such third party. In this case, the only ground urged by the petitioner herein is, his impleadment would avoid multiplicity of the proceedings.

19. The learned counsel for the petitioner would submit that the alleged power agent, who executed the sale deed in favour of the present



C.R.P.(MD)No.537 of 2017

WEB COPY

petitioner, and the counsel appearing for the plaintiff in the instant suit are none other than the same person, and the photo of Mr.T.A.Punithan has also been annexed along with the typed set at page No.28. From the perusal of the records, it is clear that during pendency of the suit, and having appearing as a counsel on behalf of the plaintiff, and having full knowledge of the litigation, with total disregard to the pendency, the execution of the sale deed in favour of the present petitioner could not be seen an act above board.

20. Therefore, this Court is of the view that for deciding the issue involved in the suit, the same could be decided even in the absence of the petitioner. Therefore, he could not come within the definition of a necessary party. Likewise, though he happens to be a proper party as he pleads and that the suit property is the part of the property allegedly purchased by the petitioner, there is imminent danger of enlarging the scope of the suit in the event of impleadment, and would divert whole issue from biparti to tri party.



C.R.P.(MD)No.537 of 2017

WEB COPY

21. In view of the above detailed discussion, this Court could not find any infirmity in the findings of the learned trial Judge. Hence, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.08.2023

NCC : Yes/No
Index : Yes/No
Ls

To

- 1.The III Additional District Munsif,
Tiruchirappalli.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.537 of 2017

C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.537 of 2017

11.08.2023