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C.R.P.(PD).No.577 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.577 of 2021
and CMP.No.4885 of 2021

M.Kalimuthu

... Petitioner

vs.

1.R.Palanisamy
2.K.Venkidusamy
3.Sakundhala Devi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 18.12.2020 passed in I.A.No.3 of 2020 in O.S.No.85 of 2014 on the file of the IV Additional District Judge, Coimbatore, by allowing this Civil Revision Petition for the grounds emphasized above.

For Petitioner
For Respondents

: M/s.V.S.Usharani
:Mr.J.Pothiraj for R1
Not ready in notice for R2
No appearance for R3



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking his impleadment in a suit for specific performance filed by the first respondent against the respondents 2 and 3.

2. It is the case of the petitioner that he has got title over 10 cents of land, which is part of the subject matter of the suit sale agreement, under a settlement deed executed by his grandmother. It is the specific case of the petitioner that the grandmother executed a settlement deed dated 29.10.1977 settling 10 cents of the property in S.No.481 in favour of petitioner's father viz., Marappa Gounder and after his death, the petitioner is entitled to the property. Therefore, by claiming title over the portion of the agreement mentioned property, the petitioner wanted to come on record as the party defendant. The said petition was dismissed by the Court below on the ground that the petitioner was not a party to the suit sale agreement and therefore his presence is not at all required to decide the suit for specific performance of the agreement.



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3. The learned counsel appearing for the petitioner submitted that the petitioner has got independent right over portion of the property covered by the agreement and hence any decree passed in specific performance suit will cause irreparable hardship to the petitioner. Therefore sought for allowing of impleading petition.

4. The learned counsel appearing for the respondents submitted that the petitioner is not a party to the suit sale agreement and in a suit for specific performance of the agreement, a 3rd party stranger is not a necessary party.

5. In support of her contention the learned counsel appearing for the respondent relied on the judgment in ***AIR 2005 SC2813*** reported in ***Kasturi Vs. Iyyamperumal and others***. In the said case law, the Apex Court had taken up for consideration the following questions:

“The only question that needs to be decided in this case is whether in a suit for specific performance of contract for sale of a property instituted by a purchaser against the vendor, a stranger or a 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 defendant in the said suit.”

6. The said question was answered by the Apex Court in negative in following words:

14. As discussed hereinafter, whether respondent Nos.1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of respondent Nos.1 and 4 to 11 before the Court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and the respondent Nos.2 and 3 and whether contract was executed by the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. It is an



admitted position that the respondent Nos.1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinearlier that in the event, the respondent Nos.1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of Vijay Pratap & Ors. Vs. Sambhu Saran Sinha & Ors. reported in 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. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against the



respondent Nos.2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind the respondent Nos.1 and 4 to 11.(emphasis supplied by this Court). It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against the respondent Nos.2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event respondent Nos.2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since the respondent Nos.1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, the respondent Nos.1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of the CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or respondent No.3. (emphasis supplied by this Court). On the other hand, if the decree is passed in favour of the



appellant and sale deed is executed, the stranger to the contract being the respondent Nos.1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

15. 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



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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.

7. Therefore, after detailed discussion, the Apex Court came to the conclusion that the stranger to the agreement is not a necessary party in a suit for specific performance and any decree passed in such a suit will not bind him. It is also stated in case the successful party in a suit for specific performance attempts to take possession of the property in pursuance of the decree the 3rd party asserting independent title is also entitled to obstruct the same.

8. In view of the law laid down by the Apex Court in the above mentioned case law, the revision petitioner who is asserting independent title



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in respect of the portion of the property covered by the agreement is not a necessary party in a suit for specific performance and accordingly the Civil Revision Petition is dismissed by confirming the fair and final order passed by the Court below. However, it is made clear that any decree passed in a suit for specific performance filed by the first respondent against the respondents 2 and 3 will not bind the petitioner and in case the first respondent attempts to take possession of the property in pursuance of the said decree, the petitioner is always entitled to obstruct the same by taking shelter under alleged independent title, if it is permissible in law.

9. With these clarifications, the Civil Revision Petition is stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

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The IV Additional District Judge,
Coimbatore.

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S.SOUNTHAR, J.

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