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CMP.No.7565 of 2021 in SA.No.257 of 2021

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R. SAKTHIVEL, J.

This petition is filed under Order (1) Rule 10(2) of the Code of Civil Procedure, 1908, by the appellant in S.A.No.257 of 2021, praying to implead the respondents 2 and 3 herein as respondents 2 and 3 in the second appeal.

2. The petitioner herein is the plaintiff while the First respondent herein is the defendant before the Trial Court for the sake of convenience, the parties are referred to as per their litigative status before the Trial Court. It is to be noted that this petition has been filed while the Second Appeal has not yet admitted.

3. The case of the plaintiff is that the plaintiff and the defendant entered into sale agreement dated 03.01.2002 for purchase of the property in RS.No.227/1 of Vadasiruvallur Village, Sankarapuram Taluk, Kallakurichi, measuring an extent of 2½ Cents for a total sale consideration of Rs.1,00,000/-. According to the plaintiff, a sum of Rs.90,000/- was paid as advance and the sale deed was to be executed upon payment of balance sale consideration of Rs.10,000/- on or before 02.01.2004. The plaintiff sent legal notice dated 28.12.2013 calling upon the defendant to execute the sale deed by receiving the



balance sale consideration of Rs.10,000/-. Then, since the defendant has not executed the sale deed as per the agreement, the plaintiff filed the Suit in O.S.No.4 of 2014 before the District Munsif, Sankarapuram praying to direct the defendant to execute the Sale deed as per the Sale agreement. The learned District Munsif vide Judgment and Decree dated 22.10.2016 decreed the suit as prayed for. Feeling aggrieved by the said Judgment and Decree the defendant filed an appeal in A.S.No.100 of 2016 before the Principal Subordinate Court, Kallakurichi. The First Appellate Court by its Judgment and Decree dated 16.12.2020 allowed the appeal, set aside the Decree for Specific Performance and directed the defendant to return the advance amount along with 9% interest. Aggrieved by the said Judgment and Decree, the plaintiff filed the present second appeal.

4. It is seen from records that the second appeal was presented before this Court on 01.03.2021.

5. This C.M.P. has been filed as the defendant executed a Gift settlement deed pending the second appeal in favour of the respondents 2 and 3 herein on 15.03.2021 vide Doc.No.1363 of 2021 in respect of the suit property. Hence, according to the plaintiff, the respondents 2 and 3 herein are necessary parties to



decide the appeal.

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6. The learned Senior Counsel Mr.P.Valliappan, appearing for the petitioner/plaintiff has submitted that the respondents 2 and 3 herein are claiming rights through the defendant and they are not claiming independent title. Hence, the proposed respondents 2 and 3 herein are necessary parties to the second appeal. He has further submitted that for the purpose of effective adjudication of the decree, if any, passed in favour of the plaintiff, the respondents 2 & 3 herein are necessary parties. Accordingly, he prayed to allow this petition.

7. Mr.A.Arunbabu, learned counsel for the defendant has submitted that the proposed respondents 2 & 3 herein are not necessary parties to decide the second appeal, in view of Section 52 of the Transfer of Property Act, 1882. Accordingly, he prayed for dismissal of the petition.

8. Heard both sides. Perused the materials available on record.



9. Admittedly, the sale agreement was executed on 03.01.2002 for the sale consideration of Rs.1,00,000/-. According to the plaintiff, the plaintiff paid a sum of Rs.90,000/- as advance and the balance amount is only Rs.10,000/-. The sale was to be completed on or before 02.01.2004. The Trial Court decreed the suit, but the First Appellate Court reversed the decree on 16.12.2020 and ordered the defendant to return the advance amount to the plaintiff. The second appeal was presented before this Court on 01.03.2021. The defendant executed the alleged Gift Settlement deed in favour of the respondents 2 and 3 herein on 15.03.2021 (i.e, after filing of the second appeal).

10. Section 52 of the Transfer of Property Act is relevant to answer the question involved in the petition. Section 52 of the Transfer of Property Act reads as follows :-

“52. Transfer of property pending suit relating thereto.—

During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government], of [any] suit or proceeding [which is not collusive and] in. which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt



with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.”

11. In view of Section 52 of the Transfer of Property Act, the proposed respondents 2 and 3 herein as “*pendente lite settlee*” are neither necessary nor proper parties.

12. The alleged Gift Settlement deed is valid, subject to the decree to be passed in the Second Appeal. In other words, if the plaintiff/appellant succeeded in the second appeal, the respondents 1 to 3 herein will be bound to execute sale deed in his favour as per the agreement. If the plaintiff/appellant fails in the Second Appeal, respondents 2 and 3 herein's title will be valid.

13. In the decision relied in ***Kasturi v. Iyyamperumal and others*** reported in **(2005) 6 SCC 733** relied upon by the learned counsel for the plaintiff the Hon'ble Apex Court in Paragraph 22 has held as follows :-

“22. For the reasons aforesaid, in our view, the stranger to the contract, namely, Respondents 1 and 4 to 11 making claim



independent and adverse to the title of Respondents 2 and 3 are neither necessary nor proper parties, and therefore, not entitled to join as party-defendants in the suit for specific performance of contract of sale.”

14. The decision relied upon by the learned counsel for the petitioner is not applicable to the facts of the case on hand.

15. In the decision of this Court reported in ***P.Ranjith Kumar V. Baskar and others*** reported in ***2022 SCC Online Mad 1828***, relied on by the learned counsel for the Plaintiff, proposed impleading parties therein were claiming independent title against the vendor, hence, this decision is also not applicable to the present case.

16. In the decision of this Court reported in ***R.Robert Bettan v. G.R.Aravind and others***, reported in ***2014 SCC Online Mad 4675*** relied on by the plaintiff side, the original suit was filed on 14.09.2009 and the first defendant filed written statement and specifically pleaded that second item of the suit property was sold to one Premalatha on 28.01.2009 i.e, prior to the filing of the suit. Considering the facts and circumstances of the case, this Court held that a purchaser who acquires the property before filing of the suit is a necessary



party to the suit. The Hon'ble single judge of this Court in Paragraph 4 of the Judgment held as follows :-

“4. Admittedly, the proposed party sought to be impleaded as the fifth defendant has purchased the second item of the suit property on 29.01.2009 from the first defendant. It is not in dispute that the item so purchased by the proposed party also forms part of the suit agreement dated 22.07.2009. Therefore, when the property purchased by the proposed party forms part of the said agreement, the said purchaser is undoubtedly a proper and necessary party to the proceedings and the court below has rightly considered all these aspects and allowed the I.A. also by relying on various decisions rendered by the Hon'ble Supreme Court as well as by this Court. I find no infirmity or illegality in the order passed by the Court below. Accordingly, I find no merits in the civil revision petition and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.”

17. As far as this case is concerned, the defendant allegedly executed the Gift Settlement deed in favour of the proposed respondents 2 and 3 on



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15.03.2021 i.e, after filing of the Second Appeal. Hence, ***R.Robert Bettan's*** case (supra) is factually different and not applicable to the instant case.

18. In view of the above discussion, this Court is of the considered view that the respondents 2 and 3 herein are neither necessary nor proper parties to decide the second appeal. Hence, this petition is liable to be dismissed and accordingly, this civil miscellaneous petition is dismissed.

21.08.2024

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