



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024

PRONOUNCED ON : 04.09.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

A. No. 6049 of 2023

in

C.S. No. 499 of 2011

This application has been filed to implead the applicant as proposed party/proposed 5th defendant in the above suit.

2. The learned counsel for the applicant would submit that the sale agreement dated 4.3.2010 is forming part of the sale agreement dated 13.11.2009 and General Power of Attorney dated 13.11.2009. Since the applicant is one of the party in the Sale agreement dated 04.03.2010, the applicant is necessary party to be impleaded as 5th defendant in the main suit. The plaintiff as well as the defendants 1 to 3 have not acted in good faith and they colluded together and not taken any steps. Hence, the above suit was dismissed for default against D-4 (applicant herein). Hence, the



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applicant filed an application in O.A.No.3812/2022 in C.S.No.499/2011 for seeking an order to restore the applicant in the above suit. The application in O.A.No.3812/2022 was dismissed by this Hon'ble Court on 21.12.2022 on the ground that as there is no provision to restore by the defendant. But there is no prohibition in filing an application to implead him as proposed party/proposed defendant -5 in the above suit. Hence, the applicant has filed the present application to implead him as party/5th defendant in the suit.

3. The learned counsel for the 1st respondent/plaintiff submits that even though the Applicant herein is a party to the suit Sale Agreement dated 4/3/2010, as no relief is prayed as against the Applicant, he has been arrayed only as a formal party in the suit. Further, the present suit is filed for specific performance of the suit Sale Agreement dated 4/3/2010 entered between the plaintiff and the Defendants 1 to 3. As Defendants 1 to 3 had failed to perform their part of the contract, the present suit was filed. Hence, the issue involved in the present suit is with regard to the enforcement of the Sale Agreement dated 4/3/2010. In these circumstances, the alleged claim of the Applicant against Defendants 1 to 3 based on an



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alleged Sale Agreement dated 13/11/2009 is outside the scope and purview of the present suit. The Applicant was arrayed as the 4th Defendant in the suit and as no relief is prayed as against the Applicant. Hence no steps were taken against the 4th defendant thereby the suit is dismissed as against the him. Thereafter, the Applicant filed an Application in A.No.3812 of 2022 for restoring the suit against him which was dismissed observing as follows:

..."the plaintiff as dominus litus, is free to choose his defendant and if he does not want to proceed against the certain defendant and allows the suit to be dismissed as against this defendant, it is not given to that defendant to seek restoration of the suit as against him. He has to take proper recourse through other methods for protecting his interest. This court does not see any merit in this application. Accordingly, the application is dismissed."

After the dismissal of the aforesaid application, the applicant has filed the present application for the same cause of action. Hence, it is not maintainable and liable to be dismissed.

4.Heard both sides and perused the material available on record.



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5. On a perusal of the records, it is seen that in the plaint itself, it is stated that since the plaintiff is not praying for any relief as against the 4th defendant who is a party to the Sale Agreement, he has been arrayed as a formal party in the present suit. Further, as no steps were taken against the applicant in the suit, the suit as against the applicant/4th defendant was dismissed by order dated 24.11.2014. After this order, the applicant has filed A.No.3812 of 2022 for restoring the suit as against him. This Court by order dated 21.12.2022 has dismissed the same by observing that the plaintiff as dominus litus, is free to choose his defendant. While being so, the applicant has filed the present application before this Court seeking the same prayer is to re-adjudicate for the same cause of action which is not maintainable and liable to be dismissed.

6. Accordingly, this application stands dismissed. No costs.

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A.A. NAKKIRAN, J,

Lbm

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