



C.R.P.(PD)No.4478 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4478 of 2024
and C.M.P.No.24999 of 2024

P. Ravi

.. Petitioner

Vs

1. T.Vivekanandan

2. N.Gopal

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.03.2024 passed by the learned II Additional District Judge (FAC), Tiruchengode in I.A.No.3 of 2023 in I.A.No.2 of 2022 in O.S.No.348 of 2022.

For Petitioner : Mr.S.Chendur Eashwaran

For Respondents : Mr.D.Shivakumaran

ORDER



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WEB COPY This civil revision petition challenges the order of the learned II Additional District Judge at Tiruchengode in I.A.No.3 of 2023 in I.A.No.2 of 2022 in O.S.No.348 of 2022, dated 21.03.2024.

2. The civil revision petitioner is a third party to O.S.No.348 of 2022. The 1st respondent herein presented O.S.No.348 of 2022 seeking for recovery of a sum of Rs.11 lakhs. The suit has been presented on the foot of a promissory note. Summons were taken to the defendant who is the 2nd respondent before me. An application was also filed calling upon the defendant to furnish security or in the default, to attach the petition mentioned properties. This application was taken out as a mean of a protection for the plaintiff to recover his amounts. Notice was ordered in that application also.

3. A certified copy of the proceedings in I.A.No.2 of 2022 has been produced by Mr.S.Chendur Eashwaran. It shows that the learned District Judge had ordered the 2nd respondent to furnish security to the suit claim on 24.08.2022. Thereafter, he adjourned the matter to 23.09.2022. On 23.09.2022, the 2nd respondent/defendant appeared in person before the



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learned District Judge and sought time to engage a counsel and to file a counter. Adjourning the matter on that day, the learned Judge directed that a counter be filed on 17.10.2022 and continued the order directing the defendant to furnish security. On 17.10.2022, the 2nd respondent/defendant engaged a lawyer and sought for time to file a counter. Repeatedly, for the very same purpose, the matter was adjourned on 05.12.2022 and 19.12.2022.

4. On 23.01.2023, to the shock and surprise of the plaintiff, he came to know that the civil revision petitioner had allegedly purchased the property from the 2nd respondent on 13.10.2022. Hence, he took out an application to implead the civil revision petitioner as a party to I.A.No.2 of 2022 as well as in the suit. This application was numbered as I.A.No.3 of 2023. The learned District Judge ordered notice in the application. The civil revision petitioner filed a counter stating that he had purchased the property, after making due enquiry, with the neighbors and on verification of the encumbrance certificate. The parties did not enter the witness box, but had marked several documents.

5. The plaintiff had marked Exs.P1 and P2 namely, the deeds



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disclosing the purchase that had been made by the 2nd respondent from one Muthu Gounder and the alienation that had been made by the 2nd respondent in favour of the civil revision petitioner. On the side of the civil revision petitioner, Exs.R1 to R19 namely, several deeds of cancellation of agreements, no due certificate etc.

6. On a consideration of the affidavit, counter and the documents filed before the Court, the learned Judge felt that the presence of the civil revision petitioner is essential in the application as well as in the suit and hence, allowed the impleading.

7. Aggrieved by the same, the proposed party is on revision before me.

8. When the matter came up for admission, I requested Ms.N.Lavanya, who represented the civil revision petitioner, to serve notice on Mr.N.Jayabalamurugan, the learned counsel, who represents the plaintiff in the Court below. Notice has been served and Mr.D.Shivakumaran has entered appearance for the plaintiff/1st respondent.

9. I heard Mr.S.Chendur Eashwaran and Mr.D.Shivakumaran. I



have carefully gone through the records.

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10. The narration of the aforesaid fact shows that the 2nd respondent had appeared before the learned District Judge and was aware that there was an order directing him to furnish security. Thereafter, at his instance, the matter was adjourned on three occasions. Taking advantage of the fact that the Court had granted him with an indulgence of adjournment, he had entered into a sale deed with the civil revision petitioner.

11. Whether the civil revision petitioner is a *bonafide* purchaser of the suit property without due notice or otherwise, are matters which the civil revision petitioner and the 1st respondent would have to demonstrate before the Court after tendering a evidence, if they so desire. However, the civil revision petitioner cannot plead that he is not a proper and necessary party to the attachment proceedings. His interest has come about pending the litigation and therefore, he necessarily has to be before the Court. In case the Court comes to a conclusion that the purchase made by the civil revision petitioner was with the knowledge of the orders of the Court, then he would be answerable to the claim that will be made by



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the plaintiff. On the contrary, if the Court were come to the conclusion that the civil revision petitioner is a *bonafide* purchaser of the property, consequences will follow. However, I am not in a position to agree with the submission of Mr.S.Chendur Eashwaran that the civil revision petitioner is not a necessary party to the interlocutory application.

12. At the same time, I am not in a position to agree with Mr.D.Shivakumaran that the civil revision petitioner is a proper and necessary party to the suit. With respect to the suit, the plaintiff would have to prove that the 2nd respondent/defendant had received the amounts and had executed a promissory note. For this purpose, a Johnny-come-lately in the form of the civil revision petitioner is neither essential nor necessary. The alleged right of the civil revision petitioner has come about after the presentation of the plaint. Therefore, his presence in the suit is absolutely unnecessary.

13. In the light of the above discussions, the civil revision petition partly succeeds on the following terms:

(i) The order passed by the learned Trial Judge in I.A.No.3 of 2023 in I.A.No.2 of 2022 in O.S.No.348 of 2022 dated 21.03.2024 is sustained.



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(ii) In so far as the impleading of the civil revision petitioner to the

suit is concerned, it will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

II Additional District Judge (FAC), Tiruchengode.

V. LAKSHMINARAYANAN,J.

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