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C.R.P.(PD).No.3879 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3879 of 2022 &
C.M.P.No.20342 of 2022

Renuka

... Petitioner

-Versus-

1.Dhanapal

Ramasamy Naidu (Died)

Sarojini (Died)

2.Nandakumar

3.N.Venkatesan

4.Suseela

5.Minor Kamalica

Rep. by is natural guardian and mother ... Respondents

Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the Principal District Munsif Court, Coimbatore dated 25.07.2022 in I.A.No.3 of 2022 in OS.No.1935 of 2001.

*For Petitioner : Mr.J.Pradeep
for Mr.Paramasivadoss*

For Respondent 1 : Mr.S.Venkatesh

*For Respondents : No appearance
2 to 5*



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ORDER

This civil revision petition arises against the order dated 25.07.2022 in I.A.No.3 of 2022 in O.S.No.1935 of 2001 on the file of the learned Principal District Munsif at Coimbatore.

2. O.S.No.1935 of 2001 seeks for the following reliefs:

“ a) directing that the agreement to sell dated 14.07.1989 said to have executed by the first defendant in favour of the second defendant in respect of the suit property is not true, valid and genuine one and binding upon the plaintiffs;

b) granting permanent restraining the defendants 1 and 2; their men from in anyway interfering with this peaceful possession and enjoyment of the suit property;

c) directing the defendants 1 and 2 (Amended as per the orders in I.A.No.1500/2007) to pay the costs of the suit; and

d) granting such other and further reliefs as may be deemed fit and proper in the circumstances of the case.”

3. The case of the plaintiffs in that suit is that defendants 1 and 2 therein fabricated an agreement dated 14.07.1989 and on that basis, they attempted to



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interfere with the possession and enjoyment of the property by the plaintiff.

Pending the litigation, the plaintiff had entered into an agreement of sale with the first respondent herein. This agreement of sale is dated 09.05.2014.

4. The first respondent/the agreement holder sought to implead himself in the present suit. The said application was opposed by the plaintiffs, stating that the present first respondent is neither a proper nor necessary party to decide the issues involved in the suit.

5. Learned District Munsif came to the conclusion that the remedy for the proposed party is to file a separate suit, but however, allowed the application on the ground that by impleading the first respondent in the suit, it would prevent multiplicity of proceedings. Hence this revision has been filed by the plaintiff.

6. Heard Mr.J.Pradeep for Mr.Paramasivadas for the petitioner and Mr.S.Venkatesh for the first respondent.

7. The test for impleading a party in a suit is to find out whether he is a proper and necessary party. A necessary party is one without whom the court cannot proceed to grant a decree. A proper party is one whose presence is necessary for the disposal of the suit. Multiplicity of proceedings is only an additional benefit which enures in favour of the proposed party, but that is not



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the test for allowing the application.

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8. As pointed above, the test will always be in terms of Order I Rule 10(2) of the Code of Civil Procedure, to ascertain whether the person is necessary or proper. The suit, as seen from the reliefs extracted above, is filed seeking a declaration that the sale agreement on which the first and second defendants are relying upon is fabricated and not binding upon the plaintiff.

9. The issues in the suit revolved around the agreement dated 14.07.1989. The first respondent herein claims a right under an agreement dated 09.05.2014. For the purpose of deciding whether the agreement dated 14.07.1989 is true and genuine, the presence of *johnny-come-lately*, namely the first respondent, is neither necessary nor proper.

10. In fact, if the first respondent is impleaded, it will lead to embarrassment of the trial as issues which do not relate to the plaintiffs and defendants 1 and 2 will have to be gone into by the court. The proper remedy for the proposed first respondent would be to file a suit for specific performance of the agreement dated 09.05.2014 and not to inter-meddle or dabble in the suit between the plaintiffs and defendants 1 and 2.



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11. To reiterate, the presence of the first respondent is neither essential nor necessary.

12. Learned Principal District Munsif had rightly come to the conclusion that the solution for the first respondent herein is only to file a suit for specific performance of the contract. Having come to that conclusion, the court erred in allowing the application on the ground that the first respondent has to be impleaded in order to avoid the multiplicity of proceedings.

13. In the light of the above discussion, I am constrained to interfere with the order of the learned Principal District Munsif dated 25.07.2022 in I.A.No.3 of 2022 in O.S.No.1935 of 2001 and the said order is set aside. It is left open to the proposed party to file a suit for specific performance if he so desires.

14. The learned Principal District Munsif will take into consideration that the suit has been pending for more than two decades and shall give it all the priority that it deserves and dispose it of as per the direction of this Court with respect to matters which have been pending for more than 10 years.

15. With the above observation, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

The District Munsif Court, Coimbatore



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V.LAKSHMINARAYANAN, J.

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