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C.R.P.(MD)No.459 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 28/03/2024

Date of Pronounced : 16/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No. 459 of 2024

and

CMP (MD) No. 2307 of 2024

1.Jebaselvi Jeyakumar
2.Jebasingh Asir Moses
3.Prince Jebakumar
4.Jebaraj
5.Prabha Packiaseeli

: Petitioners/
Proposed parties

Vs.

1.S.T.Ponniah
2.Samuel Jebasundar
3.Emi

: 1st Respondent/
1st Respondent/
Plaintiff
: Respondents 2 and 3/
Respondents 2 and 3/
Defendants

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 05/01/2024 made in IA No.692 of 2023 in OS No.51 of 2021 on the file of the District Munsif, Sathankulam.

For Petitioners : Mr.G.Aravinthan

For 1st Respondent : Mr.M.P.Senthil

For R2 and R2 : Dispensed with



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O R D E R

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This civil revision petition is filed seeking to set aside the fair and decreetal order, dated 05/01/2024 passed in IA No.692 of 2023 in OS No.51 of 2021 by the District Munsif, Sathankulam.

2.The facts in brief:-

Suit in OS No.51 of 2021 was filed by the 1st respondent herein seeking the relief of specific performance and declaration that the deed, dated 26/03/2021 is null and void, for permanent injunction and for costs, etc. The defendants appeared and filed their written statement. During the course of trial process, a petition in IA No.692 of 2023 was taken out by the 3rd parties to implead themselves as party defendants. That was dismissed by the trial court.

3.Against which, this civil revision petition is preferred.

4.The averments made by the petitioners in the petition are that the original defendants have no independent right in the property. They are only co-owners or co-shares, as the case may be. Originally, the property comprised in Survey No.295/11 measuring about 13



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cents belongs to their grand-father namely Asirvatham Nadar. Asirvatham Nadar purchased the property from one Koil Pillai Nadar on 16/09/1973. After the death of Asirvatham Nadar, the entire properties devolved upon Selvaraj Nadar, who is his son. He died leaving the petitioners herein and the defendants and another daughter by name Christian Silvans. So they are the co-sharers of the property. There was no partition between the legal heirs of Selvaraj Nadar. The sale deed alleged to have been executed between the plaintiff and the original defendants, dated 17/12/2018 is not proper, since it has been executed by the defendants that they are the sole owners. So it is not binding upon them. Since they are also the co-owners of the property, they are also necessary parties for the litigation.

5.That was resisted by the first petitioner/plaintiff stating that there was an oral partition in respect of survey No.295/11 and other properties. The sharers were allotted separate properties. After mutation of the patta, they are in separate possession. Even if it is admitted that the petitioners are the co-owners, the suit property is measuring only 1.24 cents. But the entire extent available in the suit survey number is 14 cents. So the



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petitioners can claim only 6.65 cents. So their right will not be affected in any manner by virtue of the sale agreement and the suit. Only at the instance of the defendants, the present petition is filed.

6.Heard both sides.

7.As mentioned in the preamble portion of the order, the suit is filed by the plaintiff seeking the relief of specific performance, on the basis of the sale agreement, dated 17/12/2018 entered between the first defendant and himself.

8.The learned counsel appearing for the petitioners would straightaway draw the attention of this court to the judgment of the Hon'ble Supreme Court in MORESHAR YADAORAO MAHAJAN Vs. VYANKATESH SITARAM BHEDI (D) THR. LRS. AND OTHERS (2022)7 SCR 257, wherein reference was made to the judgment reported in Kasthuri Vs. Iyyaperumal and others [(2005)6 SCC 733. Reference was also made to the judgment of the Hon'ble Supreme Court in the case of Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others [(2010)7 SCC 417 as to the definition of necessary parties, which is extracted hereunder:-



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"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

9.In the conclusion, the following tests were laid,
which is extracted in para 19.



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"7.....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings, (2)no effective decree can be passed in the absence of such party."

10.By relying upon this, he would submit that the proposed parties are either necessary parties nor proper parties.

11.Per contra, the learned counsel appearing for the 1st respondent by relying upon the following judgments:-

1.Kasturi Vs. Iyyamperumal and others
[(2005) 6 SCC 733];

2.Bharat Kasondas Thakkar Vs. Kira
Construction Company and others [(2008)13
SCC 658];

3.Krishnan Vs. P.Palanisamy and four
others [2010(3) CTC 460];

4.Gurmit Singh Bhatia Vs.Kiran Kant
Robinson and others [(2020)13 SCC 773].

would submit that not only the parties to the contract are necessary parties, but also who acquired interest in



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the subject matter of the sale agreement are also necessary parties.

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12.In the light of the above said rival submissions, let us go to the pleadings.

13.As mentioned above, there was an agreement between himself and the first defendant. But however, the first defendant made encumbrance in respect of a portion of the property in favour of the second defendant. So the second defendant was also impleaded as a party.

14.Now we will see the proposed parties in the petition. They have stated that the defendants 1 and 2 are not having any independent right or title over the property. They are only co-owners. The suit property originally belonged to their grand-father namely Asirvatham Nadar by way of purchase, dated 16/09/1973. After the death of Asirvatham Nadar, the property devolved upon his only son namely Selvaraj Nadar. Selvaraj Nadar also expired in 2011. So the property devolved upon his two children namely the proposed parties and the first defendant and others.



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15.In the light of the above said pleadings, it is seen that even though the sale agreement was entered into between the plaintiff and the first defendant, the proposed parties are also having interest in the subject matter of the sale agreement. Without their presence, an effective decree cannot be passed. So, the order passed by the trial court is perfectly legal and does not suffer from any illegality or irregularity.

16.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

16/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Munsif,
Sathankulam,
Thoothukudi District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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