



C.R.P(MD)No.1711 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1711 of 2014

and

M.P(MD)No.1 of 2014

Navneetham @ Navaneethan

... Petitioner/3rd party/Proposed 2nd defendant

vs.

1.Lakshmi ...1st respondent/1st respondent/plaintiff

2.Narayanan Chettiar

... 2nd respondent/2nd respondent/defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and ex-order dated 27.08.2013 made in I.A.No.70 of 2012 in O.S.No.24 of 2012 on the file of the Additional District & Sessions Judge, Theni at Periyakulam.

For Petitioner : Mr.R.Surianarayanan

For Respondents : No Appearance

ORDER

The instant Civil Revision Petition has been filed by the petitioner third party one Navaneetham @ Navaneethan in a suit for specific performance filed by one Lakshmi, challenging the order dated



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27.08.2013 made in I.A.No.70 of 2012 in O.S.No.24 of 2012 on the file of the Additional District & Sessions Judge, Theni at Periyakulam.

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2. It is the case of the petitioner that the suit property belongs to one Sigappi. According to the petitioner, she entered into a sale agreement with the petitioner herein on 08.10.1995. It is also brought to the knowledge of this Court that in pursuance of the above sale agreement, the petitioner has filed a suit for specific performance in O.S.No.201 of 1996 on the file of the Sub-Court, Periyakulam, wherein he obtained a decree and the said decree was confirmed by this Court in S.A(MD)No.301 of 2006 on 13.06.2017.

3. The learned counsel for the petitioner would submit that in pursuance of the specific performance decree confirmed by this Court in second appeal, the petitioner has also moved an execution application and obtained a sale deed and delivery of the property.

4. The learned counsel for the petitioner would further submit that the said Sigappi in order to defeat the decree, has fabricated the document and entered into a sale agreement with one Narayanan on 02.11.1994 and in pursuance of such sale agreement, the said Narayanan has filed a suit for specific performance against Sigappi.



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As it was a collusive suit, Sigappi has not appeared before the Court and an ex-parte decree was passed against her.

5. The learned counsel for the petitioner would also submit that based upon the ex-parte decree obtained by Narayanan, he entered into a sale agreement with one Lakshmi, who is none other than the daughter of Sigappi. Based upon the said sale agreement entered into between Lakshmi and Narayanan, now that Lakshmi has moved a suit for specific performance in O.S.No.24 of 2012 on the file of the Additional District & Sessions Judge, Theni at Periyakulam. The instant impleading application has been filed to implead the third party in the suit filed by Lakshmi against Narayanan in O.S.No.24 of 2012. In all these suits, the properties are one and the same.

6. The learned counsel for the petitioner would also bring it to the notice of this Court that the petitioner has also filed a suit for declaration to declare that the ex-parte decree passed in O.S.No.120 of 2007 is not binding upon him and the said suit is pending in O.S.No.179 of 2011 before the Sub-Court, Theni..

7. Therefore, it is the submission of the learned counsel for the petitioner that unless the petitioner be impleaded in O.S.No.24 of



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2012, collusiveness of Lakshmi, Narayanan and Sigappi, could not be brought to the knowledge of this Court and that, on impleadment of the petitioner in the suit, no prejudice will be caused to the plaintiff and the defendant and that, the same would pave a joint trial in the suit filed by the petitioner in O.S.No.179 of 2011 with O.S.No.24 of 2012.

8. The learned counsel for the petitioner also relied on the decision in **Sumtibai & Others v. Paras Finance Co.Mankanwar and others** reported in **2007-4-L.W.865**, wherein the Hon'ble Supreme Court while distinguishing the well settled principle of the Hon'ble Supreme Court laid down in **Kasturi vs. Iyyamperumal and Others** reported in (2005) 6 SCC 733, has held as follows:

"9. Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in Kasturi vs. Iyyamperumal and others - (2005) 6 SCC 733 = 2005-4.L.W.25. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in



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dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. In the present case, the registered sale deed dated 12.8.1960 by which the property was purchased shows that the shop in dispute was sold in favour of not only Kapoor Chand, but also his sons. Thus prima facie it appears that the purchaser of the property in dispute was not only Kapoor Chand but also his sons. Hence, it cannot be said that the sons of Kapoor Chand have no semblance of title and are mere busybodies or interlopers.

. 14. In view of the aforesaid decisions we are of the opinion that Kasturis case (supra) is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

15. Also, merely because some applications have been rejected earlier it does not mean that the legal representatives of late Kapoor Chand should not be allowed to file an additional written statement. In fact, no useful purpose would be served by



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merely allowing these legal representatives to be impleaded but not allowing them to file an additional written statement. In our opinion, this will clearly violate natural justice.”

9. Therefore, the learned counsel for the petitioner by relying on the above judgment would submit that since the petitioner has got semblance of title over the suit property, though he is a third party to the specific performance suit, still he may come within the definition of “proper and necessary Party”. Hence, prayed to implead the petitioner in the suit in O.S.No.24 of 2012.

10. I have heard the learned counsel for the petitioner and perused the materials placed before this Court. There is no representation on behalf of the respondents.

11. In the impugned order, the trial Court has held that in a suit for specific performance, the petitioner, who is a third party to the suit cannot have any right to be impleaded and dismissed the application.

12. However, as rightly submitted by the learned counsel for the petitioner, the petitioner has got semblance of right over the suit



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property and he has been meticulously following the judicial proceedings and resisted all attempts made by the defendants and was able to get confirmation of decree up to this Court. Therefore, the submissions made by the learned counsel for the petitioner that the petitioner has got semblance of right over the suit property, is well-merited and it is also pertinent to mention here that in order to show his bonafideness, the petitioner has already moved a suit in O.S.No.179 of 2011 so as to declare that the ex-parte decree passed in O.S.No.120 of 2007 is not binding upon him.

13. Therefore, in view of the peculiar circumstances, this Court is of the view that the impleadment of the petitioner herein in O.S.No.24 of 2012 would advance the cause of justice. Therefore, this Civil Revision Petition is allowed and thereby, the impleading petition in I.A.No.70 of 2012 in O.S.No.24 of 2012 on the file of the Additional District & Sessions Judge, Theni at Periyakulam, is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2024

Index:Yes/No
NCC:Yes/No
PM



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To

- 1.The Additional District & Sessions Judge,
Theni at Periyakulam.
- 2.The Sub-Court,
Theni.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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C.KUMARAPPAN, J.

PM

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