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C.R.P.(PD).No.5265 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5265 of 2024
and
C.M.P.No.29426 of 2024

Razalikhan

... Petitioner

Versus

1. Bouvanesvarane
2. Mushrath Jagan
3. Sathunisa Begam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and decreetal order dated 05.06.2024 made in I.A.No.2146 of 2023 in O.S.No.59 of 2023 on the file of the Principal District Judge, Puducherry by allowing the civil revision petition.

For Petitioner : Mr.V.Elangovan



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ORDER

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This civil revision petition challenges the order passed by the learned Principal District Judge at Puducherry in I.A.No.2146 of 2023 in O.S.No.59 of 2023 dated 05.06.2024.

2. The civil revision petitioner is a third party to the proceedings. O.S.No.59 of 2023 is a suit for specific performance of an agreement of sale dated 11.02.2022, filed by the 1st respondent against the respondents 2 and 3.

3. The 1st respondent claims that he entered into an agreement with one Mir Sultan Mohidine and the 2nd defendant on 11.02.2022. Thereafter, he requested the vendors to come forward and execute a sale deed. Prior to the suit, Mir Sultan Mohidine passed away on 03.05.2022. Subsequently, in December 2022, when he approached the defendants to alienate the property in his favour. They refused to do so. Hence, he came forward with the suit.



4. Claiming that he is a co-owner of the property, the civil revision petitioner filed an application in I.A.No.2146 of 2023 under Order I Rule 3 of the Civil Procedure Code to implead himself as the defendants to the suit. This application was opposed by the plaintiff that he is *dominus litis* and that the presence of the proposed party is neither necessary nor essential.

5. The learned Trial Judge, after considering the affidavit and counter, came to a conclusion that the civil revision petitioner is not a "necessary party" to the proceedings. Consequently, he dismissed the petition. Hence, this revision.

6. I heard Mr. V.Elangovan for the civil revision petitioner.

7. Mr.Elangovan points out that the property originally belonged to one Abdul Majid Khan, who left behind several legal heirs. The proposed party is the grand son of Mr.Abdul Majid Khan. Hence, he pleads that he



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has interest in the suit scheduled mentioned property and therefore, he should be brought on record.

8. I have carefully considered the submissions of Mr.Elango.

9. *In Deputy Commissioner Vs.Ramakrishna Narain, AIR 1953 S (52)*, the Supreme Court laid down two tests for deciding whether a person is a 'necessary party'. They are:-

(i) There must be right to have relief against such party in respect of "the matter" involved in the proceeding.

(ii) It should not be possible to pass an effective decree in the absence of such a party.

10. 'Necessary Party' is one without whom the Court cannot pronounce a binding Judgment in the suit. In a suit for specific performance, the necessary parties to the suit are the parties to the agreement. It is not in dispute that the civil revision petitioner is neither a



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signatory nor a participant in the agreement for which the Suit for specific performance has been filed.

11. A third party to an agreement has no say in a suit for specific performance. Even if the suit were to be decreed, whatever right that the vendors possess, if at all, is what is transferred by the Court in favour of the purchaser. The Suit for specific performance is not a Suit for title. It will be governed by the principles of Indian Contract Act, 1872 and the Specific Relief Act, 1963. The issues related to the title of property should be addressed under the Transfer of Property Act, 1882. If the proposed party has any right over the property, his remedy is to file a separate suit for partition. His presence in this suit being unnecessary, I do not find reason to take different view than that has been taken by the learned Principal District Judge at Puducherry.

12. All that it remains to be stated is that the Supreme Court in ***Kasturi Vs. Iyyamperumal & Ors, 2005 (2) CTC 676***, while reversing a



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Judgment of this Court held that, in suit for Specific Performance, a third party has no say.

13. It is left open to Mr.Elango's client to work out their rights in the Suit for partition presented in O.S.No.168 of 2023 on the file of learned III Additional District Judge, Puducherry.

In the light of above observations, this civil revision petition is dismissed. No costs.

02.01.2025

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no



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To

The Principal Judge, Family District Court,
Puducherry.



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V.LAKSHMINARAYANAN, J.

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