

(2014) 11 MAD CK 0576

Madras High Court

Case No: C.R.P (PD) No. 141 of 2012 and M.P. No. 1 of 2012

S. Vairamoorthy

APPELLANT

Vs

P. Ramachandran

RESPONDENT

Date of Decision: Nov. 27, 2014

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

P.R. Shivakumar, J.

The arguments advanced by Mr.R.Sagadevan, learned counsel for the revision petitioner, by Mr.G.Pugazhenth, learned counsel for the first respondent and by Mr.P.Nagaraju, learned counsel for the second respondent are heard. The materials produced in the form of typed set of papers are also perused.

2. The first respondent in the revision filed a suit as O.S.No. 80/2003 on the file of Sub Court, Chidambaram against the second respondent for the relief of specific performance based on an agreement for sale dated 30.04.1991 allegedly executed by Natesan Pillai, the father of the second respondent. The said suit was later on transferred to the court of Additional District Munsif, Chidambaram and re-numbered as O.S.No. 124/2009. When the suit stood listed for trial, the first respondent herein/plaintiff failed to appear and the same came to be dismissed for default on 05.01.2004. Subsequently, the first respondent/plaintiff filed I.A.No. 331/2008 for the restoration of the said suit. The sole respondent in the said application, namely the second respondent herein made an endorsement stating No Objection for allowing the said petition. Before the said petition came to be disposed of, the revision petitioners, who were not parties to the suit, filed I.A.No. 332/2008 for getting them impleaded as respondents in I.A.No. 331/2008 in the

above said suit.

3. The learned trial judge dismissed the said application filed by the revision petitioners by order dated 30.12.2008 holding that the suit being one for enforcement of the inter se right between the parties to the agreement, the petitioners could not seek their impleadment. In view of the finding that the petitioners were not entitled to be impleaded in the suit, applying the same ratio, the learned trial judge held that the petitioners were not entitled to be impleaded in the Restoration application, namely I.A.No. 331/2008.

4. As against the said order, no revision was filed initially. The petitioners, after the restoration of the suit, filed I.A.No. 381/2009 for getting them impleaded as defendants in the above said suit. The said application came to be dismissed by the trial court by order dated 28.06.2011. The said order was challenged before this court in C.R.P.(PD) No. 5116/2011. This court, by order dated 22.12.2011, dismissed the said civil revision petition, with liberty to the petitioners to challenge the order dated 30.12.2008 made in I.A.No. 332/2008, if so advised. Hence the petitioners have come forward with the present revision challenging the said order dated 30.12.2008 made in I.A.No. 332/2008.

5. The learned trial judge in the impugned order, after narrating the facts and relying on the judgment of this court in [M. Sathishkumar Vs. M. Ramasamy and 5 others](#) , held that in a suit for specific performance, the third party, who is claiming to be the owner of the property, could not seek his impleadment and thereby enlarge the scope of the suit as a title suit. However, while dismissing the said application holding that the petitioners were neither necessary parties nor proper parties, the learned trial judge observed that in case the petitioners' right was sought to be affected, they were at liberty to file a separate suit. The said order, according to the considered view of this court, does not suffer from any defect or infirmity, much less illegality deserving interference by this court in exercise of its power of superintendence over the subordinate courts under Article 227 of the Constitution of India. The reasons are as follows:

6. First of all, in a suit for specific performance, the obligation in personam of the vendor under the agreement for sale is sought to be enforced. The question, "whether the vendor under the agreement for sale does have a valid title to be transferred as required by the purchaser is not in dispute?". There is no dispute between the plaintiff and the defendant in this regard and they proceeded on the assumption that the father of the second respondent did have a marketable title to the suit property. A suit for specific performance being a suit in personam, its judgment shall not be binding on a third party, who is not a party to the suit.

7. If at all the petitioners claim that they have derived title from any one of the parties to the said agreement for sale, then they will become proper parties, if not necessary parties to be impleaded in the suit. They cannot convert the suit into one

for resolving the title dispute between the petitioners and the second respondent. It shall be open to the petitioners to institute a separate suit to establish their right to the suit property. They also do have the right to resist any attempt that may be taken in the course of execution of the decree, if any, that may be obtained against the second respondent by the first respondent. When such an obstruction is made, then it shall be for the Executing Court to decide the question of upholding or removing the obstruction.

8. In view of the availability of the said effective remedies, the prayer made by the petitioners herein for their impleadment in the suit for specific performance between the first respondent and the second respondent has been rightly declined by the trial court. There is no merit in the revision and the same deserves to be dismissed. Accordingly, the revision is dismissed.

However, it is hereby observed, without expressing any opinion regarding the right of the petitioners, the petitioners are at liberty to initiate separate proceedings in the manner known to law to establish their right including offering resistance to the execution of the decree, if any, that may be obtained by the first respondent against the second respondent. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.