



C.R.P.(MD)No.2302 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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RESERVED ON: 22.03.2024

PRONOUNCED ON: 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.R.P.(MD)No.2302 of 2019
and
C.M.P.(MD)No.12095 of 2019**

1.G.Rajan

2.R.Shanmuga Lakshmi

: Petitioners/Petitioners/Proposed
Respondents 2 & 3/Proposed Defendants
2 & 3

Vs.

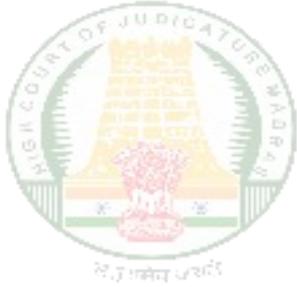
1.Mariappan

: 1st Respondent/1st Respondent/
Petitioner/Plaintiff

2.R.Kasi Mariappan

: 2nd Respondent/2nd Respondent/
Respondent/Defendant

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.253 of 2017 in I.A.No.229 of 2017 in O.S.No.71 of 2017, dated 30.10.2019, on the file of the Sub Court, Kovilpatti.



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For Petitioner : Mr.H.Arumugam

For Respondents : Mr.D.Srinivasa Raghavan
for R.1

: R.2 – Dispensed with
-Memo filed

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.253 of 2017 in I.A.No.229 of 2017 in O.S.No.71 of 2017, dated 30.10.2019, on the file of the Subordinate Court, Kovilpatti, dismissing the petition filed under Order 1 Rule 10(2) C.P.C.

2. The revision petitioners are the third parties / proposed respondents. The first respondent, as plaintiff has filed the suit in O.S.No.71 of 2017 against the second respondent before the Subordinate Court, Kovilpatti for recovery of Rs.4,00,633/- due on a promissory note dated 13.04.2016 alleged to have been executed by the second respondent / defendant to the first respondent/plaintiff. The first



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respondent/plaintiff has also filed an application in I.A.NO.229 of 2017
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under Order 38 Rule 5 C.P.C., seeking attachment of the property before the judgment. Pending the above petition for attachment before judgment, the revision petitioners who are the third parties to the above proceedings have filed the above application under Order 1 Rule 10(2) C.P.C., seeking orders to implead them as respondents 2 and 3 in I.A.No. 229 of 2017 in O.S.No.71 of 2017. The first respondent/plaintiff has filed a counter statement raising objections. The second respondent/defendant has remained ex parte. During enquiry, the revision petitioners/third parties have produced and exhibited 11 documents as Exs.P.1 to P.11. The first respondent has not adduced any documentary evidence. The learned trial Judge, after enquiry, has passed the impugned order dated 30.10.2019 dismissing the impleadment petition. Aggrieved by the order of dismissal, the third parties have preferred the present revision.

3. The case of the revision petitioners / third parties in the affidavit filed in support of the impleadment petition is that the suit property was belonging to the defendant, that the defendant has offered to sell the property and the proposed parties have agreed to purchase the same, that



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they have entered into a sale agreement on 12.04.2017 fixing the sale price at Rs.25,00,000/-, that the proposed parties have paid Rs. 10,00,000/- on the date of sale agreement itself and agreed to pay the balance amount of Rs.15,00,000/- on or before 30.04.2017, that the proposed parties have proposed to obtain a loan from Tamil Nadu Mercantile Bank, Kovilpatti and also agreed to settle the loan amount due by the defendant with Repco Bank, Thoothukudi, that in pursuance of their agreement, the proposed parties have obtained loan of Rs. 15,00,000/- on 21.04.2017 from Tamil Nadu Mercantile Bank, Kovilpatti and paid the same into Repco Bank, Thoothukudi and got back the original documents submitted by the defendant with Repco Bank and handed over the same to their creditors – Tamil Nadu Mercantile Bank, that since there were some problems for registering the unapproved sites, they were not in a position to register the sale deed immediately and the defendant has executed a document dated 07.06.2017 admitting the receipt of the sale price and to execute the sale deed and also hand over the possession of the property, that the defendant after 21.04.2017 has no right, title or interest in the property, that since the proposed parties were ready and willing to take the sale deed, the defendant with ulterior motive has been postponing the same on some pretext or the other, that



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the proposed parties and the Tamil Nadu Mercantile Bank have submitted
WEB COPY an objection petition before the Sub Registrar Office, Kovilpatti and also
lodged a complaint with the Deputy Superintendent of Police, Kovilpatti,
that the proposed parties have then filed a suit for specific performance
in O.S.No.56 of 2017 and the same was pending, that the plaintiff by
alleging that the defendant has borrowed some amount, has filed the
above suit and also filed an application to attach the property before the
judgment, that if the property is attached, then the proposed parties and
the Tamil Nadu Mercantile Bank will suffer irreparable loss and hardship
and that therefore, it has become just and necessary for the proposed
parties to get themselves impleaded in the petition for attachment before
judgment.

4. The defence of the first respondent / plaintiff is that the
proposed parties in collusion with the defendant has filed the above
petition to cheat the plaintiff, that the contention of the proposed parties
that they have entered into a sale agreement dated 12.04.2017 is not true
and the same was created for the purpose of the petition, that the sale
agreement alleged by the proposed parties is not legally valid, that the
proposed parties who are not the parties to the above proceedings are not



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entitled to file the above petition, that the sale agreement will not confer
WEB COPY any title over the property, that the impleading petition itself is not legally maintainable and that therefore, the petition is liable to be dismissed.

5. It is pertinent to note that the proposed parties by alleging that they have entered into a sale agreement with the defendant on 12.04.2017, have filed a suit for specific performance in O.S.No.56 of 2017 against the second respondent/defendant and the Tamil Nadu Mercantile Bank, Kovilpatti and that the Principal District Judge, Thoothukudi has passed a judgment and decree dated 03.12.2018 granting the relief of specific performance of the agreement directing the defendant to execute and register a sale deed and also granted permanent injunction restraining the defendant from making any encumbrance or sale to the third parties in contravention of the sale agreement dated 12.04.2017.

6. The learned Counsel for the revision petitioners would submit that subsequent to the filing of the revision, the Principal District Judge, Thoothukudi has executed a sale deed in favour of the revision



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petitioners on behalf of the second respondent / defendant dated 23.09.2020 and the same came to be registered on the file of the Sub Registrar Office, Kovilpatti. The learned Counsel for the revision petitioners has also produced a copy of the sale deed dated 23.09.2020. The learned Counsel for the revision petitioners would submit that the proposed parties have paid Rs.10,00,000/- on the date of sale agreement itself and subsequently they have paid the remaining sale price of Rs.15,00,000/- by taking a loan from the Tamil Nadu Mercantile Bank and paid that amount to Repco Bank, Thoothukudi towards settlement of the loan amount due by the second respondent/defendant.

7. The learned Counsel would further submit that since there were some problems for registering the unapproved sites, they were not in a position to get the sale deed registered, but the defendant, after executing necessary documents admitting the receipt of sale price and agreeing to execute the sale deed, has also handed over the possession of the property to the proposed parties and that therefore, they have become the owners of the property. The learned Counsel would further submit that since the defendant has not executed the sale deed, the proposed parties were constrained to file the suit for specific performance and the suit was



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decreed vide judgment and decree dated 03.12.2018 and that the
WEB COPY Principal District Judge, Thoothukudi has executed a sale deed dated 03.12.2018 in favour of the proposed parties on behalf of the second respondent/defendant and that therefore, the proposed parties have become the absolute owners of the property and are in possession and enjoyment of the same and that therefore, the respondent/plaintiff cannot proceed with the attachment petition as the defendant is not the owner of the property.

8. As rightly contended by the learned Counsel for the revision petitioners, they have not sought for their impleadment in the main suit, which was filed for recovery of money due on the promissory note, but they have only sought for their impleadment in the petition for attachment of the property in dispute before judgment and that in case if the properties are ordered to be attached, then the proposed parties as well as their creditors – Tamil Nadu Mercantile Bank will suffer loss and hardship. Admittedly, the second respondent / defendant has remained ex parte in the petition in I.A.No.229 of 2017 filed under Order 38 Rule 5 C.P.C., and also in the present application in I.A.No.253 of 2017 filed under Order 1 Rule 10(2) C.P.C.



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9. No doubt, as rightly contended by the learned Counsel for the first respondent / plaintiff, the sale agreement will not confer any title over the property. It is settled law that an agreement to sell does not confer title or transfer the ownership to the intended purchaser and that an agreement to sell is not a conveyance, but at the same time, what the agreement for sell created is a right for the purchaser to purchase a property in question on satisfaction of certain conditions. But as rightly contended by the learned Counsel for the revision petitioners, in the case on hand, even on the date of sale agreement itself, the proposed parties have paid a substantial payment of Rs.10,00,000/- out of Rs.25,00,000/- fixed as the sale price. More importantly, the proposed parties have also paid the balance sale price of Rs.15,00,000/- to Repco Bank, Thoothukudi to clear the loan due by the defendant.

10. It is the specific contention of the revision petitioners that after paying the entire sale price, the original title deeds which were with the Repco Bank were received and the same were handed over to the proposed parties' creditors – Tamil Nadu Mercantile Bank and more



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importantly, they have taken possession of the property in dispute from **WEB COPY** the defendant. Even assuming for arguments sake, even after the above aspects, the sale agreement does not confer any right or title over the property, as already pointed out, the proposed parties have obtained a decree for specific performance and thereafter while executing the decree, has taken a sale deed from the Court itself and the same came to be registered.

11. Considering the above, as rightly contended by the learned Counsel for the revision petitioners, the proposed parties cannot be considered as strangers, but their presence is very much necessary while deciding the application for attachment before the judgment. But the learned Subordinate Judge, without considering the above aspects in proper perspective by simply observing that whether the sale agreement entered into between the proposed parties and the defendant is legally valid, whether the proposed parties are having any rights in the property can only be decided after the disposal of the suit in O.S.No.56 of 2017 and that the proposed parties cannot be stated to have any rights in the property, their impleadment is not necessary, dismissed the petition.



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12. As rightly pointed out by the learned Counsel for the revision petitioners, the revision petitioners in the enquiry before the trial Court, have specifically produced and exhibited the judgment and decree passed in O.S.No.56 of 2017, on the file of the Principal District Court, Thoothukudi, whereunder the third parties were granted the decree for specific performance and the learned trial Judge even without looking into the same, had made the above observations that the rights of the proposed parties can be decided only after the disposal of the suit in O.S.No.56 of 2017. Considering the above, the impugned order dismissing the impleadment petition cannot be sustained and as such, the same is liable to be set aside.

13. In the result, the Civil Revision Petition is allowed and the impugned order, dated 30.10.2019, passed in I.A.No.253 of 2017 in I.A.No.229 of 2017 in O.S.No.71 of 2017, on the file of the Sub Court, Kovilpatti is set aside and the petition in I.A.No.253 of 2017 stands allowed. The learned Subordinate Judge, Kovilpatti is directed to conduct enquiry in I.A.No.229 of 2017 and dispose of the same within a period of one month from the date of receipt of a copy of this order.



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Consequently, the connected Miscellaneous Petition is closed. There
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shall be no order as to costs.

30.04.2024

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. The Subordinate Court, Kovilpatti.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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