

Balakrishnan Vs. R.Janaki

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Court : Chennai

Decided On : Jul-01-2013

Judge : S.Tamilvanan

Appellant : Balakrishnan

Respondent : R.Janaki

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

01. 07-2013 CORAM : THE HONOURABLE MR.JUSTICE S.TAMILVANAN C.R.P (PD).No.1038 of 2013 and M.P.No.1 of 2013 Balakrishnan Petitioner vs.

1. R.Janaki 2. R.Jayabalan 3. A.Manickam 4. K.Indirani 5. K.Rajamani 6. Saravanan 7. Velmurugan 8. Santhanalakshmi 9. K.Satish Kumar Respondents Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 27.09.2012 made in I.A.No.1079 of 2010 in O.S.No.143 of 2009 on the file of the learned III Additional District Judge, Salem For Petitioner : Mr.G.K.Ilandhirayan for M/s. Sai Bharat and Ilan For Respondents : No appearance for R1 to R6 Mr.M.Sekar for R7 Mr.M.Santhana Raman for R8

ORDER

Heard the learned counsel appearing for the petitioner as well as the learned counsel for the respondents 7 and 8. In spite of service of notice, there is no

representation for the respondents 1 to 6 and they were also called absent.

2. This Civil Revision has been preferred under Article 227 of the Constitution of India, challenging the order, dated 27.09.2013 made in I.A.No.1079 of 2010 in O.S.No.143 of 2009 on the file of the III Additional District Judge, Salem.

3. It is seen that the suit in O.S.No.143 of 2009 was filed by the petitioner herein, originally against the respondents 1 to 6. As per the case of the petitioner / plaintiff, the suit property was originally belonged to one Rama Gounder. The respondents 1 to 5, who were defendants in the suit are the legal heirs of the said Rama Gounder, after his death.

4. According to Mr.G.K.Ilandhirayan, learned counsel appearing for the petitioner, the said Rama Gounder had executed a power of attorney deed in favour of the sixth respondent / sixth defendant, Saravanan on 13.07.2006. By virtue of the power of attorney deed executed by Rama Gounder in favour of the sixth respondent herein, he entered into an agreement to sell the suit schedule of property to the petitioner / plaintiff. According to the learned counsel for the petitioner, as per the agreement, sale consideration was fixed at Rs.21 lakhs and out of which Rs.7 lakhs was paid by the petitioner to Rama Gounder through his power of attorney, the sixth respondent herein. Since Rama Gounder failed to execute sale deed, as per the terms of agreement of sale, after the death of the said Rama Gounder, the petitioner filed suit against defendants 1 to 5 as legal heirs of Rama Gounder and the sixth defendant as power of attorney of Rama Gounder.

5. Learned counsel appearing for the petitioner further submits that only after the written statement filed by the defendants, it was brought to the notice of the petitioner that Rama Gounder had cancelled the power of attorney deed, executed in favour of the sixth respondent and he (Rama Gounder) executed a Will in favour of the seventh respondent herein. The seventh respondent, by virtue of the Will after the death of Rama Gounder, executed a sale deed in favour of the eighth respondent herein. In the aforesaid circumstances, according to the learned counsel for the petitioner, the respondents 7 & 8 are necessary parties for proper adjudication of the suit, in view of the sale deed executed by the 7th respondent in

favour of the 8th respondent herein. If they are not impleaded as party in the suit, seeking specific performance of the contract, even in case of getting a decree against the other defendants, the same could not be executed by the petitioner / plaintiff against the 8th respondent herein, therefore, the respondents 7 and 8 are necessary parties to be impleaded in the suit.

6. Per contra, Mr.M.Sekar, learned counsel appearing for the seventh respondent drew the attention of this Court to Order 1 Rule 10 (2) CPC and submitted that the petitioner cannot say that the 7th and 8th respondents as necessary parties to the suit, as per the agreement. The learned counsel also argued further on the concept of proper and necessary party to a suit. There is no dispute on the analogy of the terms ".proper party". and ".necessary party". and further, the counsel for the 7th respondent said that there is no pleading in the accompanying affidavit filed by the petitioner, before the Court below in I.A.No.1079 of 2010 to implead the respondents 7 and 8 and submitted that there could be no presumption of fact, though there could be presumption of law, the said proposition of law is not in dispute.

7. On going through the accompanying affidavit filed by the petitioner, it is seen that all necessary averments, except the details of the sale deed executed by the 7th respondent in favour of 8th respondent are available. Learned counsel appearing for the petitioner drew the attention of this Court to the written statement filed by the respondents, wherein they have categorically stated that the 7th respondent, by virtue of a Will executed by Rama Gounder executed a sale deed in favour of the 8th respondent. It cannot be disputed that admission needs no proof, as per the Indian Evidence Act and it has been stated in the written statement that by virtue of a Will, executed by Rama Gounder in favour of the 7th respondent, he executed sale deed in favour of the 8th respondent herein.

8. Since the petitioner / plaintiff has filed the suit for specific performance of contract, based on the agreement of sale entered into by Rama Gounder, through his power of attorney with the petitioner / plaintiff has stated that the sale consideration was Rs.21 lakhs and out of which Rs.7 lakhs was said to be received by Rama Gounder, through his power of attorney, the sixth respondent /

sixth defendant, who was arrayed as one of the defendants in the suit, based on the said agreement. It is not in dispute that the suit was instituted by the petitioner / plaintiff, seeking specific performance of contract and in view of the sale made by the 7th respondent, by virtue of the cancellation of power of attorney deed executed by Rama Gounder in favour of 6th respondent, based on the alleged Will, executed in favour of the 7th respondent, he in turn executed the sale deed in favour of 8th respondent, hence, the 8th respondent is a necessary party and the 7th respondent is a proper party, as contended by the learned counsel for the petitioner / plaintiff.

9. Therefore, it is not in dispute that necessary party should be impleaded, in order to get an executable decree, as per Order 1 Rule 10 (2) CPC. It was argued on behalf of the revision petitioner that the respondents 7 and 8 are necessary and proper parties, to be impleaded in the suit, otherwise the petitioner / plaintiff may face difficulties in executing the decree against the 8th respondent herein, who is claiming title by virtue of the sale deed, executed in his favour.

10. Learned counsel appearing for the petitioner in support of his contention relied on a decision in K.P.Rajendran vs. N.R.Nachimuthu, reported in 2011 (1) CTC331 wherein this Court (R.S.Ramanathan, J) held that impleading of purchaser of property pending suit for specific performance is mandatory, as he is a necessary party, to be impleaded, for executing the decree, if the suit is decreed in favour of the plaintiff.

11. In Kapur Singh vs. State of Punjab, (1995) 3 SC447 Bharat Karsondas Thakkar vs. Kiran Construction Company and others, 2008 (5) MLJ424(SC) and Krishnan vs. P.Palanisamy and others, 2010 (3) CTC480 it has been held that a third party, who is claiming independent title to the suit property cannot be impleaded in a suit for specific performance, so as to convert the same into a suit for title. However, when the parties sought to be impleaded is not claiming any independent title, but claiming title through one of the shares, he will be a necessary and proper party, to be impleaded as one of the defendants in the suit.

12. In this Revision, the 8th respondent claims rights to the property, by virtue of the sale deed executed by the 7th respondent, who had claimed saleable right,

based on an alleged Will executed by Rama Gounder. As per the case of the petitioner / plaintiff, Rama Gounder had entered into the agreement for sale with the petitioner / plaintiff, through his power of attorney, the 6th respondent herein. Hence, the respondents 7 and 8 are proper and necessary parties respectively.

13. As it is a suit seeking specific performance of the contract, the plaintiff is entitled to implead the subsequent purchaser of the suit property to avoid multiplicity of proceedings and to get an executable decree, against the 8th respondent herein. On the facts and circumstances, it is clear that the 8th respondent is a necessary party and the 7th respondent is a proper party to the suit claim. The Court below has not considered the aforesaid facts and law properly, but erroneously dismissed the Interlocutory Application filed by the petitioner / plaintiff. It cannot be said that the petitioner / plaintiff is adopting any delay tactics and the suit is also not a part-heard case, only posted for trial, as submitted by both the learned counsel. Hence, it is just and reasonable to allow this Civil Revision Petition, so as to implead the respondents 7 and 8 as proper and necessary parties respectively to the suit. S.TAMILVANAN, J tsvn 14. In the result, the Civil Revision Petition is allowed and the impugned order, dated 27.09.2012 made in I.A.No.1079 of 2010 in O.S.No.143 of 2009 on the file of the learned III Additional District Judge, Salem is set aside and the Court below is directed to implead the 7th and 8th respondents as defendants 7 and 8 in the suit and dispose the same, after providing reasonable opportunity to both sides, according to law, uninfluenced by the findings of this Court, if any, in this order. Consequently, connected miscellaneous petition is closed. No order as to costs. 01-07-2013 Index : Yes / No Internet : Yes / No tsvn To The III Additional District Judge Salem C.R.P (PD).No.1038 of 2013

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