

Kuppayee. Vs. Thajudeen

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Court : Chennai

Decided On : Jul-20-2012

Judge : K.Ravichandra Baabu, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Order 1 Rule 10(2), Order 22 Rule 4(2); Specific Relief Act - Section 19; [Constitution of India](#) - Articles 227

Appeal No. : C.R.P.(PD) No. 1721 of 2010 M.P.No.1 of 2010

Appellant : Kuppayee

Respondent : Thajudeen

Advocate for Def. : Mrs.R.Meenal, Adv.

Advocate for Pet/Ap. : Mr.V.Bhiman, Adv

Judgement :

Civil Revision Petition filed against the fair and decreetal order dated 17.3.2010 made in I.A.No. 273 of 2008 in O.S.No.40 of 2007 on the file of the Subordinate Judge, Kallakurichi.

ORDER

1. Whether a third party to an agreement of sale can be impleaded as a party defendant, at her instance, in a suit for specific performance, is the question to be

answered in this Civil Revision Petition.

2. The petitioner herein as a third party filed an application under Order 1 Rule 10 C.P.C. to implead her as proposed party/ second defendant in a suit filed by the first respondent herein for specific performance of an agreement of sale said to have been executed by the second respondent on 29.4.2002 in respect of an extent of 55 cents of land. The suit in O.S.No. 40 of 2007 came to be filed on the file of the Sub Court, Kallakurichi by the first respondent herein against the second respondent.

3. The case of the first respondent is that the second respondent agreed to sell the suit property for a total consideration of Rs. 1,00,000/- and consequently entered into an agreement of sale on 29.4.2002 and received a sum of Rs.50,000/- as advance and thereafter received a further sum of Rs. 40,000/- within the time stipulated in the agreement. According to the plaintiff only a sum of Rs.10,000/- is to be paid and when the defendant viz., the second respondent herein refused to execute the sale deed by receiving the said balance sale consideration of Rs.10,000/-, he filed the said suit seeking for specific performance of the agreement of sale. In the said suit the petitioner herein filed an application in I.A.No. 273 of 2008 under Order 1 Rule 10 CPC to implead herself as a party defendant by contending that a portion of the suit property measuring an extent of 10 cents belongs to her in pursuant to a settlement deed executed by her husband on 10.6.1985. It is the further case of the petitioner that in the said piece of land she has put up her residential house and is residing in the same. Therefore, she wants herself to be impleaded as party defendant in the above said suit as the second respondent/defendant is not the owner of the entire suit property.

4. The said application was contested by the plaintiff/ first respondent by filing a counter affidavit. The second respondent remained ex parte both in the suit and in the said application filed by the petitioner. The first respondent denied the right of ownership and title of the petitioner herein in respect of the 10 cents of land and opposed the application. The Court below after considering the rival claims made by the respective parties and their pleadings filed in support of such claim, dismissed the said application by its order dated 17.3.2010. Aggrieved against the

same, the present Civil Revision Petition is filed by the petitioner under Article 227 of the [Constitution of India](#).

5. Learned counsel appearing for the petitioner, Mr.V.Bheeman, argued that the petitioner is the title holder in respect of 10 cents of land forming part of the suit property and if a decree for specific performance is granted behind her back, it would ultimately affect her interest and therefore in order to arrive at a proper decision by taking note of all the facts and circumstances, impleading of the petitioner as party defendant in the suit is highly necessary and consequently, the application filed by the petitioner under Order 1 Rule 10 CPC ought to have been allowed by the Court below. In support of his contention, the learned counsel heavily relied on a decision of the Hon'ble Supreme Court reported in 2007 (4) L.W. 865 = 2007 (10) SCC 82 in the case of Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others . The learned counsel also fairly placed two other contra judgments reported in 2008 (5) MLJ 424 (SC) = 2008 (13) SCC 658 in the case of Bharat Karasondas Thakkar Vs. Kiran Construction Co., and others as well as 2010(3) L.W. 67 in the case of Krishnan Vs. P.Palanisamy and others.

6. The learned counsel, though placed contra decisions, has however, argued that those decisions are distinguishable on facts and the judgment made by the Hon'ble Apex Court reported in 2008 (5) MLJ 424 (SC) = 2008 (13) SCC 658 (Bharat Karasondas Thakkar Vs. Kiran Construction Co., and others) was made without reference to the judgment made in 2007 (10) SCC 82 (Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others).

7. Per contra, the learned counsel appearing for the respondents argued that in a suit for specific performance, the presence of the petitioner herein, who is totally a third party to the agreement, is not at all necessary either as a "necessary party" or a "proper party". The learned counsel also submitted that the petitioner has claimed title only in respect of 10 cents of land out of the total extent of 55 cents of the suit property and therefore, if at all she has any claim over the said 10 cents, she has to work out her remedy as against the parties to the proceedings only by filing a separate suit for declaration of her title. Therefore, the learned counsel contended that the order passed by the Court below in dismissing the application

does not warrant any interference by this court by exercising power under Article 227 of the [Constitution of India](#).

8. Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials placed on record.

9. Admittedly, the petitioner herein is a third party to the suit agreement for sale dated 29.4.2002. It is also the admitted case of the parties that the petitioner herein has claimed her title only in respect of 10 cents in pursuant to a settlement deed said to have been executed by her husband on 10.6.1985 . It is not her case that she claims title to that 10 cents of land through the defendant. Therefore, the claim of the petitioner in respect of this 10 cents out of total extent of 55 cents is purely her rival claim of title as against the defendant/ second respondent' herein. Whether a rival claim made by a third party in respect of the suit property either in whole or in part thereof can be a subject matter for consideration in a suit for specific performance, is the core issue involved in this case.

10. A similar issue that arose before the Hon'ble Supreme Court in the case of Kasthuri Vs. Iyyamperumal and Others (2005(6) SCC 733) has been answered by the Hon'ble Supreme Court, consisting of three Judge Bench, in negative. There also the question that was considered is as to whether in a suit for specific performance of contract for sale of a property, instituted by the purchaser against the vendor, a stranger or a third party to the contract, claiming to have an independent title and possession over the contracted property is entitled to be added as a party defendant in the said suit. The Hon'ble Apex Court after considering the various aspects and also considering the scope of "necessary party" under Order 1 Rule 10(2) CPC, has ultimately come to the conclusion that in a suit for specific performance of a contract for sale the lis between the parties to the contract shall only be gone into and a third party or a stranger to the contract cannot be added and it is not open to the Court to decide whether such proposed parties have acquired any title and possession of the contracted property as that would not be germane for decision in the suit for specific performance of the contract for sale. After holding so, the Hon'ble Apex Court has also made certain observations regarding the solution available to such third parties and what could

be the course of action left open to them in such a situation. The Hon'ble Apex Court has thus pointed out that in the event the purchaser obtains a decree for specific performance of the contracted property against the vendors, he has to put the decree in execution. The proposed party being a non-party in the suit for specific performance is at liberty to obstruct the execution proceedings or to file an independent suit for title and possession against the purchaser. It is also pointed out by the Hon'ble Apex Court that the third party to an agreement of sale without challenging the title of the vendor by a separate suit cannot protect his possession. Therefore, the Hon'ble Supreme Court has categorically held that for effective adjudication of the controversies involved in the suit for specific performance, the presence of the third parties to the contract cannot be said to be necessary at all. The Apex Court has also pointed out that if the persons seeking addition are added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit for title.

11. The short facts in the above said case before the Hon'ble Supreme Court is that the appellant therein filed the suit against the respondents 2 and 3 for specific performance of a contract entered into between the second respondent therein acting as a power of attorney of the third respondent on one hand and the appellant on the other for sale of the contracted property. The respondents 1 and 4 to 11 who were admittedly not parties to the contract and setting up a claim of independent title and possession over the contracted property filed an application to get themselves impleaded as party defendants. The facts of the above case before the Hon'ble Supreme Court are identical to the facts in this case.

12. No doubt, the said judgment of the three Judge Bench was considered by a subsequent Division Bench of the Hon'ble Supreme Court in the case reported in 2007 (4) L.W. 865 (Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others) and observed that a third party can be impleaded in a suit for specific performance if he shows a fair semblance of title or interest in the property in dispute. By observing so, the Hon'ble Division Bench of the Apex Court distinguished the judgment made in Kasthuri's case by observing that the aforesaid decision can only be understood to mean that a third party cannot be impleaded if he has no semblance of title or interest in the property in dispute. The

said observation made by the Hon'ble Supreme Court in the Sumtibai & Others's case is strongly relied on by the learned counsel for the petitioner to substantiate his contention that the petitioner is a necessary party to the proceedings as she shows a semblance of title and interest in the property in dispute based on the settlement deed executed by her husband.

13. A reading of the facts of the case before the Hon'ble Supreme Court in Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others) shows that the issue involved in that case was against the rejection of application of the appellants therein seeking permission to file additional written statement by filing petition under Order 22 Rule 4(2) CPC read with Order 1 Rule 10 CPC.

14. The facts in Sumtibai's case are as follows:-

A suit was filed by the respondent therein against one Kappor Chand for specific performance of a contract for sale. During the pendency of the suit the said Kapoor Chand died and his wife, sons etc., applied for bringing them on record as legal representatives and accordingly they were impleaded as party defendants. Thereafter, they filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC seeking for permission to file additional written statement and for taking other pleas which are available to them. The rejection of the said application seeking for permission to file additional written statement by the trial Court was challenged in the revision before the High Court and the same was also dismissed therein. Therefore, the appeal was filed before the Hon'ble Supreme Court. It was contended on behalf of the respondent before the Hon'ble Supreme Court in that case that two of the applicants/ legal representatives of the deceased Kapoor Chand filed an application under Order 1 Rule 10 CPC and the same was rejected. Therefore, it was contended by the respondent therein that the appellants cannot be permitted to file additional written statement. However, the Hon'ble Supreme Court found at paragraph 8 of its order that the appellants therein have already been made parties in the suit and it would be strange if they are not allowed to take a defence. Thus, it was found in that case that no useful purpose would be served only by allowing them to be impleaded without allowing them to file additional written statement. Therefore, by applying the facts and

circumstances of that case to the facts and circumstances of the present case before this court, I find that both are distinguishable and consequently the learned counsel for the petitioner cannot rely on the said decision.

15. Moreover, the Hon'ble Apex Court in its subsequent decision reported in 2008 (13) SCC 658 (Bharat Karasondas Thakkar Vs. Kiran Construction Co., and others) has once again considered the very decision of Kasthuri Vs. Iyyamperumal and Others (2005(6) SCC 733) and by following the same, has held that a third party to the agreement does not fall within the category of parties to the agreement and consequently would not fall under the ambit of Section 19 of the Specific Relief Act. It was further held therein that the scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession.

16. No doubt there are two decisions of the Hon'ble Supreme Court Court one reported in 2008 (13) SCC 658 (Bharat Karasondas Thakkar Vs. Kiran Construction Co., and others), and another reported in Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others (2007 (10) SCC 82) expressing two different views. In this aspect, my considered view is that for the application of binding precedents, the facts of each case has to be seen and only after considering and satisfying with the similarity of those facts with that of the facts of the case on hand, the ratio laid down in such decision can be applied as a binding precedent. In fact the Hon'ble Apex Court in a decision reported in 2003 (2) SCC 111 (Bhavnagar University Vs. Palitana Sugar Mills Pvt. Ltd.,) has held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Further, the Hon'ble Supreme Court in a decision reported in 2006 (3) SCC 434 (Bombay Dyeing & Mfg. Co. Ltd.,(3) Vs.Bombay Environmental Actin Group and Others) has observed at para 312 as follows:-

"312. "... An order of this Court, it is well known, must be construed having regard to the text and context in which the same was passed. For the said purpose, the orders of this Court were required to be read in their entirety. A judgment, it is well settled, cannot be read as a statute. (See Sarat Chandra Mishra Vs. State of Orissa (2006 SCC (L&S) 182 and State of Karnataka Vs.C.Lalitha (2006 (2) SCC

747). Construction of a judgment, it is well settled should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Any observation made in a judgment, it is trite, should not be read in isolation and out of context. "

17. Further, in a subsequent decision reported in *Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others* (2010 (7) SCC 417) the Hon'ble Supreme Court after considering the scope of Order 1 Rule 10(2) CPC and also the scope of the expressions of "necessary party" and "proper party", found that if a non-party makes an application seeking impleadment as a proper party and if the Court finds that his addition will alter the nature of the suit or introduce a new cause of action it may dismiss the application even if he is found to be a proper party. The Hon'ble Apex Court in that case also considered the decision of the three Judge Bench made in *Kasthuri Vs. Iyyamperumal and Others* (2005(6) SCC 733) as well as the judgment made in *Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others* (2007 (10) SCC 82) and found that there is no divergence in the said two decisions. The relevant paragraphs of the decision of the Hon'ble Apex Court in *Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and Others* (2010 (7) SCC 417) are extracted hereunder:-

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

26. If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in *Kasturi* (2005(6) SCC 733) and *Sumtibai* (2007 (10) SCC 82) are with reference to the facts and circumstances of the respective cases. In *Kasturi* (2005(6) SCC 733) this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In *Sumtibai* (2007 (10) SCC 82) this

Court held that a person having semblance of title can be considered as a proper party. Submtibai (2007 (10) SCC 82) did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did Kasturi (2005(6) SCC 733) lay down that none, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a a proper party."(Emphasis supplied)

18. On consideration of the law laid down by the Hon'ble Supreme Court in the above said decisions reported in 2003 (2) SCC 111 (Bhavnagar University Vs. Palitana Sugar Mills Pvt. Ltd.,) as well as 2006 (3) SCC 434 (Bombay Dyeing & Mfg. Co. Ltd.,(3) Vs.Bombay Environmental Actin Group and Others), what follows is that to apply the precedential value of a particular decision, one has to see the facts and circumstances of the particular case and only when the said facts and circumstances of that particular case are identically similar to that of the facts and circumstances of the case on hand, the decision made in the said case can be considered as a binding precedent. By applying the said principle, I find the decision rendered in 2007 (10) SCC 82 in the case of Sumtibai & Others Vs. Paras Finance Co., Mankanwar and others is not applicable to the facts and circumstances of this case.

19. From the reading of all the case laws referred to above as well as the facts and circumstances of the present case, it is seen that the petitioner being a third party to the suit agreement is not entitled to be impleaded as party defendant in a suit for specific performance merely because she claims title over 10 cents of land being the part of the suit property when her claim is nothing but a rival claim against the vendor in the suit viz., the second respondent herein. In respect of her claim for such title as against the second respondent herein, the remedy of the petitioner is only to establish the same before the competent civil court by filing a separate suit for declaration. Undoubtedly, as found by the Hon'ble Apex Court in the Kasthuri's case reported in (2005(6) SCC 733), the petitioner herein being a non-party to the proceedings is not bound by the decree and therefore she is at liberty to make an obstruction application as and when execution proceedings are initiated in pursuant to a decree, if any, passed in favour of the plaintiff.

20. As the suit for specific performance is laid based on an agreement of sale said to have been executed between the parties, the Court is bound to decide the lis between the parties to the agreement based on their respective pleadings. If a third party is permitted to get impleaded based on an independent rival claim over the suit property, then it would ultimately result in converting the suit one from specific performance of a contract into one of declaration of title to the suit property. At this juncture, it should be noted that even the plaintiff by way of amending the pleadings cannot alter the nature of the suit. The Courts have repeatedly held that amendment of pleadings cannot be granted, if the nature of the suit is altered by way of such amendment. When the plaintiff himself cannot alter the nature of the suit by way of amendment, it is more so not possible for a third party to the proceedings to amend the nature of the suit by getting himself impleaded as party defendant by filing an application under Order 1 Rule 10 CPC . Considering all these facts and circumstances and also considering the judgment rendered by the Hon'ble Apex Court in a judgment reported in 2008 (13) SCC 658 (Bharat Karasondas Thakkar Vs. Kiran Construction Co., and others), the Court below has rightly rejected the case of the petitioner.

21. I find that the facts and circumstances of the present case and the facts and circumstances of the case reported in 2005(6) SCC 733 (Kasthuri Vs. Iyyamperumal and Others) are identically the same and the issue involved in both the cases are also similar. . Moreover, a learned Judge of this Court, rejected the claim for impleading a third party to the agreement for sale by holding that he is neither a necessary party nor a proper party to the suit for specific performance in a judgment reported in 2010 (3) L.W. 67 (Krishnan Vs. P.Palanisamy and four others). The facts of that case are also similar to the case in hand. There also the proposed party purchased the suit property therein from a third party and admittedly not party to the agreement. The learned Judge after considering the various decisions including the Kasthuri's case reported in (2005(6) SCC 733) and Sumtibai's case reported in 2007 (10) SCC 82 has ultimately found a third party to the proceedings in a suit for specific performance cannot be impleaded.

22. Therefore, by considering all the facts and circumstances, and the case laws as discussed above, I hold that the petitioner is not entitled to be impleaded as

party defendant and consequently I find no merits in the Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected M.P is closed. No costs.

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