

(2013) 08 MAD CK 0268

In the Madras High Court

Case No : Original Side Appeal No.439 of 2012 and M.P.No.1 of 2012

B. Narasimhulu Chetty

APPELLANT

Vs

K. Vijayalakshmi

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2013) 3 MadWN(Civil) 528

Hon'ble Judges : Mr. M. Jaichandren and Mr. M.M. Sundresh, JJ.

Bench : Division Bench

Advocate : Mr. P.G. Padmanabhan, Advocate, for the Appellants; Mr. N. Baskaran, Advocate, for the Respondent No. 1; Mr. H. Adaikala Arokiaraj, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. M.M. Sundresh, J.—The appellants, being aggrieved against the order passed by the learned Single Judge in the impleading application in Application No.1343 of 2011 in C.S.No.758 of 2010 filed by them, have come forward with this Original Side Appeal.

2. Facts in brief:

2.1. The first respondent, being the plaintiff, filed a suit in C.S.No. 758 of 2010 for specific performance against the second respondent as his vendor and the title holder of the suit property. The appellants filed an application in Application No.1343 of 2011 in C.S.No.758 of 2010 seeking to implead them on the ground that being the owners of the property they are necessary parties in the proceedings. The said application was rejected by the learned single Judge by holding that in a suit for specific performance, title of a third party cannot be gone into and further observing that they are neither necessary nor proper parties. Challenging the said order, the present Original Side Appeal has been filed.

3. Submissions of the Appellants:-

The learned counsel appearing for the appellants would submit that the suit property was owned by the appellants' grandfather, through whom they got the suit property, which remains to be in their possession for a number of years. The second respondent was aware of the title of the appellants as he also deposed about such fact in R.C.O.P.No.23 of 1996 filed by the first appellant against his tenant. The respondents does not have any title. Under Order XX1 of the Civil Procedure Code, an auction purchaser has to take possession within one year. The registered power deed and an agreement for sale executed in favour of the second respondent by the first respondent were cancelled by the public authorities at the instance of the appellants. When a party has even a semblance of title, the Court has to necessarily implead him as a defendant. Hence, the appeal will have to be allowed. In support of his contention, the learned counsel has made reliance upon the following judgments.

1. Sumtibai and Others v. Paras Finance Company Mankanwar Etc. and Others, 2007) 4 Law Weekly 865;
2. Amit Kumar Shaw and Others v. Farida Khatoon and Another, Air 2005 Supreme Court 2209;
3. V. Ravi @ P.V. Ravi v. V. Balakrishnan and 10 Others; and
4. Kasturi v. Iyyamperumal and Others, AIR 2005 Supreme Court 2813.

4. Submissions of the Respondents:-

Per contra, the learned counsels appearing for the respondents would submit that the appellants are neither necessary nor proper parties to the suit. The second respondent purchased the property through Court auction in the year 1995. Possession was also taken in pursuant to the Court auction sale. The appellants managed to get orders from the registering authorities without serving notice on the contesting parties. But the said persons have been shown as parties in the said proceedings. The appellants do not have any title whatsoever to the suit property. As against the auction conducted by the registering authorities, appeals have been filed and the same are pending. Therefore, the present appeal filed by the appellants will have to be dismissed. In support of their contention, the following judgments have been relied upon.

- (1) Kasturi v. Iyyamperumal and Others, (2005) 6 Supreme Court Cases 733 ; and
- (2) Bharat Karsondas Thakkar v. Kiran Construction Company and Others, (2008) 13 Supreme Court Cases 658.

5. Discussion:-

5.1. As rightly contended by the learned counsel appearing for the respondents, in a suit filed for specific performance, a third party's title cannot be gone into. If the appellants have got any grievance against both the plaintiff and the defendant in the suit, then he has to file a separate suit. The appellants cannot

agitate their case in a suit filed for specific performance. The issues involved in the suit and the one raised by the appellants are different. The appellants cannot be termed either as necessary or as proper parties. The position of law on this aspect is well settled in *Kasturi v. Iyyamperumal and others*, 2005 (2) CTC 676 (SC) : AIR 2005 Supreme Court 2813 : 2005 (6) SCC 733. Considering the scope of a suit for specific performance under Order 1 Rule 10(2) of CPC, the Honourable Apex Court has held as follows:

14. As discussed hereinafter, whether Respondents 1 and 4 to 11 were proper parties or not, the governing principle for deciding the question would be that the presence of Respondents 1 and 4 to 11 before the court would be necessary to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the contracted property. It is, therefore, obvious as noted hereinafter that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. In the case of *Vijay Pratap v. Sambhu Saran Sinha* this Court had taken the same view which is being taken by us in this judgment as discussed above. This Court in that decision clearly held that to decide the right, title and interest in the suit property of the stranger to the contract is beyond the scope of the suit for specific performance of the contract and the same cannot be turned into a regular title suit. Therefore, in our view, a third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinafter, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted

property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

15. That apart, from a plain reading of the expression used in sub-rule (2) Order 1 Rule 10 CPC "all the questions involved in the suit" it is abundantly clear that the legislature clearly meant that the controversies raised as between the parties to the litigation must be gone into only, that is to say, controversies with regard to the right which is set up and the relief claimed on one side and denied on the other and not the controversies which may arise between the plaintiff-appellant and the defendants inter se or questions between the parties to the suit and a third party. In our view, therefore, the court cannot allow adjudication of collateral matters so as to convert a suit for specific performance of contract for sale into a complicated suit for title between the plaintiff-appellant on one hand and Respondents 2 and 3 and Respondents 1 and 4 to 11 on the other. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into. As the decree of a suit for specific performance of the contract for sale, if passed, cannot, at all, affect the right, title and interest of Respondents 1 and 4 to 11 in respect of the contracted property and in view of the detailed discussion made hereinafter, Respondents 1 and 4 to 11 would not, at all, be necessary to be added in the instant suit for specific performance of the contract for sale.

16. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would be open to the court to decide the question of possession of a third party or a stranger as first the lis to be decided is the enforceability of the contract entered into between the appellant and Respondent 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In *Amon v. Raphael Tuck and Sons Ltd.* it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally.

17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.

18. The learned counsel appearing for Respondents 1 and 4 to 11, however, contended that since Respondents 1 and 4 to 11 claimed to be in possession of the suit property on the basis of their independent title to the same, and as the appellant had also claimed the relief of possession in the plaint, the issue with regard to possession is common to the parties including Respondents 1 and 4 to 11, therefore, the same can be settled in the present suit itself. Accordingly, it was submitted that the presence of Respondents 1 and 4 to 11 would be necessary for proper adjudication of such dispute. This argument which also weighed with the two courts below although at the first blush appeared to be of substance but on careful consideration of all the aspects as indicated hereinafter, including the scope of the suit, we are of the view that it lacks merit. Merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for specific performance of the contract for sale because Respondents 1 and 4 to 11 are not necessary parties as there was no semblance of right to some relief against Respondent 3 to the contract. In our view, the third party to the agreement for sale without challenging the title of Respondent 3, even assuming they are in possession of the contracted property, cannot protect their possession without filing a separate suit for title and possession against the vendor. It is well settled that in a suit for specific performance of a contract for sale the lis between the appellant and Respondents 2 and 3 shall only be gone into and it is also not open to the Court to decide whether Respondents 1 and 4 to 11 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, that is to say in a suit for specific performance of the contract for sale the controversy to be decided raised by the appellant against Respondents 2 and 3 can only be adjudicated upon, and in such a lis the Court cannot decide the question of title and possession of Respondents 1 and 4 to 11 relating to the contracted property."

5.2. In the light of the above ratio, we do not wish to go into the factual averments raised by the learned counsel appearing for the appellant. We are also of the view that the judgment relied upon by the learned counsel appearing for the appellants in *Sumtibai and Others v. Paras Finance Company Mankanwar Etc. and Others*, (2007) 4 Law Weekly 865, is not applicable to the case on hand as the facts mentioned therein are different. In the said case, the sale deed in favour of the vendor also makes a reference to his children, who got themselves impleaded in a suit for specific performance after his death. Therefore, it has got

no applicability to the case on hand. In the same way, we do not find any error in the order passed by the learned single Judge. Accordingly, this Original Side Appeal is dismissed. However, liberty is given to the appellants to file a separate suit against the respondents, if he is so advised. No costs. Consequently, connected miscellaneous petition is also dismissed. No costs.