

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Thursday, this the 6th day of April 2023

I.A.No.5/2022
in
O.S.No.66/2021

Madhu ... Petitioner/plaintiff

/ versus /

1. Vairam
2. Dhanapal
3. P.Raju ... Respondents/defendants

This petition is coming up before me on 31.3.2023 for hearing in presence of Thiru.N.Muthamil, Advocate for the petitioner and Thiru.C.Periannan, Advocate for the respondents 1 and 2 and Thiru.S.Ramamoorthy, Advocate for the third respondent and upon hearing both side arguments and on perusal of entire case records and having stood over for consideration till this day, this court delivered the following;

ORDER

This petition has been filed under Order-6, Rule-17 and section 151 of CPC to amend the plaint.

2. The averments in the petition in brief is as follows:

According to the petitioner, the first and second defendants have conspired together with the third defendant and executed a document and this petition has been

filed to delete para No.7, 8 and 9 of the plaint in respect of allegations against the third defendant. Based upon the wrong advise of the previous petitioner's counsel the third defendant has been impleaded in this suit. The suit agreement has been entered between the petitioner and the first and second defendants alone. The petitioner would initiate separate proceedings against the third defendant. Hence the third defendant is unnecessary party to this suit. Hence the plaint has to be amended accordingly.

3. The averments in the counter filed by the respondents 1 and 2 in brief is as follows:

The first and second respondents resisted the petition by contending that as the first and second defendants have sold the suit property to third defendant, the third defendant is the owner of the suit property. The section of law is not correct. Hence the petition has to be dismissed.

4. The averments in the counter filed by the third respondent in brief is as follows:

The third respondent resisted the petition by contending that this petition has been filed after the commencement of trial and filing of proof affidavit and marking of documents through PW.1 is not maintainable. The plaintiff has sought relief of specific performance and for delivery of possession. The plaintiff has not clearly stated about the compromise decree obtained before the Lok Adalat and sought for declaration that the document registered before the Sub Registrar office, Harur bearing No.1785/2021 is null

and void. The defendant herein filed O.S.No.44/2021 and the case was compromised before the Lok Adalat and the decree of the Lok Adalat was registered in the Sub Registrar office, Harur and the third defendant herein paid the entire registration charge and the title of the suit property passed to third defendant and revenue records were also changed in his name and he is in possession and enjoyment of the suit property. The third defendant is the necessary party to this suit. The petitioner also filed CRP.No.1465/2022 before the Honourable Madras High Court and the case was disposed of as this suit has been filed. The petitioner has not disclosed about the filing of the above CRP in this court. The plaintiff has filed the suit to harass the third defendant. Hence the petition has to be dismissed.

5. The point for consideration:

Whether the petition is to be allowed or not?

6. Heard both side. No oral evidence have been adduced on either side.

7. Point:

a) According to plaintiff, by wrong advise of the previous counsel the third defendant has been impleaded in this suit and he would take separate action against the third defendant. Hence the averments in the plaint in respect of third defendant has to be deleted.

b) The defendants allege that third defendant is a necessary party to this suit. Hence the petition has to be dismissed.

c) This is a suit filed for specific performance and declaration of document registered before the SRO, Harur bearing No.1785/2021 dated:7.4.2021 as null and void. It is made out from the records that the third defendant herein filed O.S.No.44/2021 against the first and second defendants in this suit and the same ended in the compromise decree before the Lok Adalat. Now the petitioner wants to delete the allegations in respect of third defendant in the plaint. This court is of the view that the Lok Adalat award bearing No.1785/2021 dated:7.4.2021 has been registered before the Sub Registrar office, Harur in which the third defendant is a party.

d) Admittedly in the previous suit in O.S.No.44/2021 the third defendant is the plaintiff. Now the plaintiff filed the suit for the relief of specific performance against the first and second defendants. This court is of the view that as the third defendant claims title of the suit property by way of Lok Adalat award, he is a necessary and proper party to this suit. There can be no valid adjudication in his absence. Hence for proper adjudication of the case the presence of third defendant is very important. There will be multiplicity of proceedings if this petition is allowed and it will also affect the right of the third defendant. The petitioner cannot be permitted to file suit against third defendant and later on withdraw it according to his convenience. If the third defendant name is removed from the suit he would suffer hardship and inconvenience and he will not be able to prove his case. Hence there are no merits in the petition and the petition is dismissed.

In the result, the petition is dismissed. No costs.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in
Open Court on this the 6th day of April 2023.

Additional Sessions Judge,
Dharmapuri.

Petitioner side Evidence, Exhibits: Nil

Respondents Side Evidence, Exhibits: Nil.

Additional Sessions Judge,
Dharmapuri.

Fair Order

I.A.No.5/2022 in
O.S.No.66/2021

Dated:6.4.2023.