

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, MAYILADUTHURAI.

Present: Thiru P.Elango, B.Sc., M.L.,

Additional District Judge

Friday, the 18th day of November 2022

I.A. No.2/2021 in O.S. No.3 /2021

. . .

Balamurugan

. . . Petitioner / Plaintiff

Vs

1. Kalaiselvi

2. Jagadesh

3. Sathish

. . . Respondents / Defendants

This petition is coming up before me on 31.10.2022 for final hearing in the presence of Tr. R.Sivapunniyam, advocate for the petitioner / plaintiff and Tr. G. Rajesh, advocate for the R2 and 3 and the R1 remained exparte and upon hearing both side and considering the connected records, this Court made the following

ORDER

This petition filed under O1 R10 CPC seeking impleading proposed party in the main suit.

1. The averments of petition affidavit in short:

The petitioner is the plaintiff in the main suit. The petitioner filed the suit seeking specific performance on the basis of agreement executed on 13.12.2017 with D1. Further this petitioner filed the suit in O.S.126/2019 before District Munsif Court, Tharangambadi seeking permanent injunction. After filing of above suit, the R1 herein taking steps to alienate the suit property in favour of R2 and R3 and hence the purchaser also added as a party in the suit. In this situation the petitioner came to know that the R2 and 3 on the basis of sale in their favour as stated above the R2 and 3 obtained a loan of Rs.20- lakhs by mortgaging the suit property with one Equitas Small Finance Bank Limited, Sembanarkovil. In this regard the petitioner also issued a notice to the proposed party on 13.07.2020. But there is no any reply from the proposed party. In this situation on the basis of above said sale in favour of R2 and 3, they created a mortgage with intention to cheat the petitioner. Therefore the above said Equitas Small Finance Bank Limited is also a necessary

party to the suit. Hence the petitioner prays to implead the above said bank as D4 in the main suit.

2. The averments of counter of respondent in short:

(Counter of R2 adopted by R3)

The averments of petition is not sustainable either in law or fact and it has to be proved by petitioner. It is false to state that the petitioner was entered into a sale agreement with R1 on 13.12.2017 and on that basis it is agreed to pay Rs.10- lakhs within a period of two months and complete the sale. The above said agreement is not true one and no any right or enjoyment over the suit property for the petitioner. The suit property owned by R1 and subsequently it was purchased by this respondents by way of registered sale deed and there after the suit property was under possession and enjoyment of this respondents. The above said Equitas Small Finance Bank is not a necessary party to the suit. The petitioner is having a habit of filing petition after petition against the fact. No any sufficient reason stated by the petitioner. Hence this respondent prays to dismiss the petition with cost.

3. The points for determination is:

Whether the petitioner is entitle for the prayer as sought for?

4. Solution:

According to petitioner he filed the suit on the basis of sale agreement dated 13.12.2017 seeking specific performance against respondents / defendants. As per the case of petitioners he entered into an sale agreement with R1. Meanwhile the R1 herein sold the suit property in favour of R2 and 3 and there after the R2 and 3 were mortgage the suit property with proposed party herein and obtained a loan of Rs.20-lakhs. In this regard the petitioner also issued a notice to the proposed party on 13.07.2020. But there is no any reply from the proposed party.

Therefore the petitioner prays to implead the proposed party as a party as D4 in the main suit. In this situation the R1 side remained exparte and R2 and 3 contend that the petitioner failed to state a sufficient reason to allow this application. The R2 and 3 side further contend that the petitioner is having a habit of filing petition after

petition with false allegation. But at the same time the alleged mortgage of suit property with the proposed party by R2 and 3 not at all denied by specific by this R2 and 3. Even though the suit agreement is between petitioner and R1 since the R1 sold the suit property in favour of R2 and 3, they were impleaded as a party already in the suit. Under above circumstances the R2 and 3 got a loan of Rs.20- lakhs by mortgaging the suit property. Hence it is necessary to add the mortgager of suit property prior to dispose this main suit. In this situation no any prejudice will be caused to the R2 and 3 because of impleading the proposed party / mortgager. In considering the all above circumstances the proposed party is a necessary party for the disposal of this case and hence it is decided to allow this application. Even though the counsel for the petitioner failed to sign in the petition, the petitioner side put their intial (short signature) on the 1st page of petition and hence it is sufficient to consider this application.

In result this application is allowed accordingly. No cost.

Dictated to the steno-typist, transcribed and computer typed by her and corrected and pronounced by me in the open Court today this the 18th day of November 2022.

Additional District Judge,
Mayiladuthurai.

Order: (Fair & Draft)
I.A. No.2/2021 in
O.S No.03/2021

Dated:

18.11.2022

