

Application Nos.3590 of 2015 and 1773 of 2011
in C.S.No.1010 of 2010 &
A.No.3589 of 2015 in A.No.5640 of 2014 in C.S.No.1010 of 2010

S.VIMALA, J.,

The suit in C.S.No.1010 of 2010 has been filed by the plaintiffs seeking division of the suit property, by metes and bounds, of their half share, allegedly allotted to them in the partition deed, dated 22.09.1995.

1.1. The preliminary decree came to be passed on 26.02.2014.

2. Application No.3590 of 2015 has been filed to pass a final decree, in terms of the preliminary decree, dated 26.02.2014, passed in the above suit.

2.1. After the passing of the preliminary decree, in Application No.5640 of 2014, a Commissioner has been appointed to inspect and note down the physical features of the property, in order to allot half share to the plaintiff with a definite measurement and boundary. In the said Application, Application No.3589 of 2015 (in A.No.5640 of 2014), (M.P.(SR) No.13289), dated 27.03.2015, has been filed by the third parties / proposed parties to get themselves impleaded.

3. Application No.1773 of 2011 has been filed by the plaintiffs / Applicants seeking to implead defendants 4 to 17 on the ground that the proposed respondents 4 to 14 have executed documents in respect of the suit property, in favour of the respondents / defendants 15 to 17, on 03.01.2011.

4. It is alleged that the proposed respondents / defendants 4 to 10 claim under Late.Gnanasundari, whose right has been recognized in the earlier partition deed, dated 22.09.1995 (based on which the suit is filed). The proposed respondents 11 to 14 claim right under one Dharmalingam, who was also a party to the earlier document.

4.1. It is contended by the plaintiffs that defendants 4 to 14 have without any right created documents in favour of proposed defendants 15 to 17 and that those documents are sham and nominal. So contending, the plaintiffs took out an application to implead respondents 4 to 17 in the suit.

4.2. However, pending the Application for impleadment in Application No.1773 of 2011, it is contended that the preliminary decree has been passed and that the plaintiffs committed mistake in not bringing the pendency of the Application to the knowledge of the Court and therefore, the mistake should be corrected by the Court

itself.

5. It is relevant to point out that a separate Application has been filed by the third parties (to be impleaded) to set aside the preliminary decree, in SR No.13291/2015 dated 27.03.2015.

5.1. Application in SR No.13292/2015 has been filed by the third parties to implead themselves as Defendants 4 to 6 in the above suit.

5.2. Application in SR No.13290/2015 has been filed by the third parties seeking stay of proceedings pursuant to the Judgment and Decree, dated 26.02.2014, passed in the above suit.

6. It is needless to point out that in A.No.1773 of 2011 filed by the plaintiffs to implead the proposed parties, notice has been ordered and proposed defendants 15 to 17 have been served. On merits, no order has been passed.

7. When the Application for impleadment is pending, which is taken out by the plaintiffs / petitioners themselves, it is not known under what circumstances, preliminary decree came to be passed, without passing orders in the Impleading Application.

8. In the application filed by the plaintiffs themselves in Application No. 1773/2011, it is stated as follows:

“.... the subject matter of the suit is the subject matter in the document created by the proposed defendants/respondents herein. Under these circumstances, the claim (wrongly stated as persons in the application) of the proposed defendants in the suit is required to be adjudicated comprehensively (grammatical mistake in the framing of the sentence has been corrected by the Court). Otherwise, there will be further multiplication of the case and the issue raised in the suit will be put to further obstruction, making use of the bogus documents.”

8.1. This exactly is the reason for this Court also in coming to the conclusion that the impleading petition ought to have been taken up and ordered before the passing of the preliminary decree.

9. In the result, the application in A.No.1773 of 2011 is partly-allowed. Out of the parties to be impleaded, the purchasers, i.e., the alleged main contesting parties / R-15 to R-17 have been already served and in respect of others, i.e., R-4 to R-14 notice has been returned. As R-4 to R-14 are said to have sold the property to R-15 to R-17 and as they have already parted with their interest in their

property, perhaps they would not have appeared / they would have made the notice returned. Therefore R-15 to R-17 alone are ordered to be impleaded.

10. Since the impleading petition is partly-allowed and the shares of the parties have to be determined, subject to the claim to be made by the proposed parties, the preliminary decree has to be set-aside and it is set aside accordingly. Consequently, all Applications at SR Stage (13290 to 13292 of 2015) and Application No.3589 of 2015 in Application No.5640 of 2014 in C.S.No.1010 of 2010 are closed as unnecessary.

13.07.2015

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