

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.255 of 2014
& M.P.No.1 of 2014

1.R.Vijayakumar
2.Kalaivani

.. Petitioners

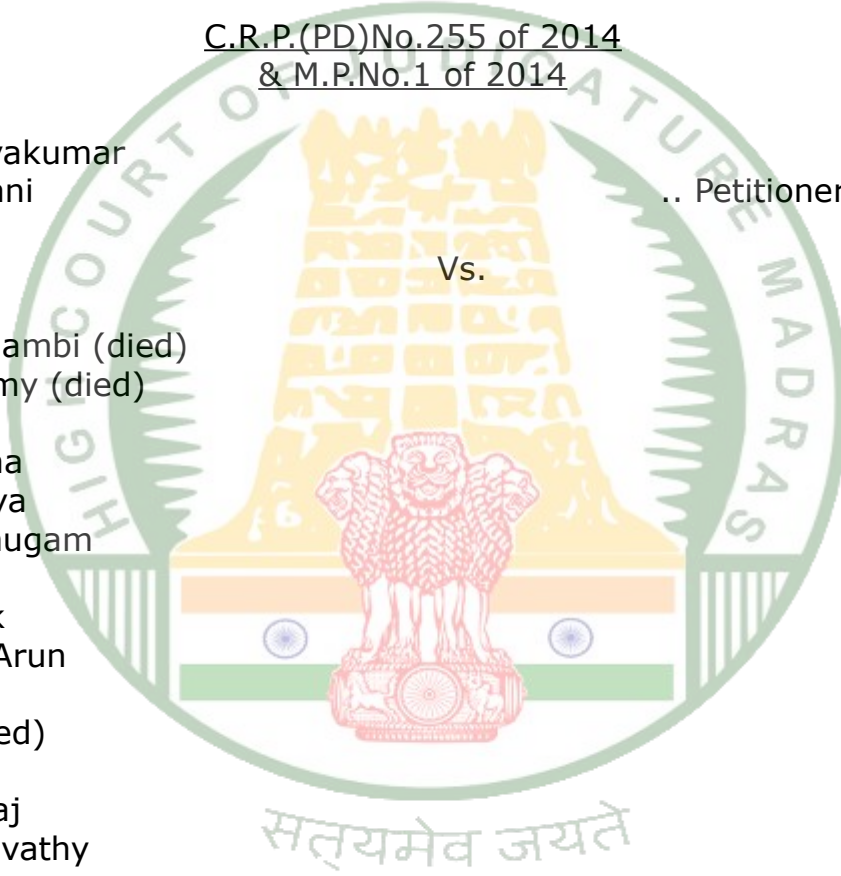
Vs.

Chinnathambi (died)
Palanisamy (died)

1.Saradha
2.Anusuya
3.Shanmugam
4.Santhi
5.Karthik
6.Minor Arun

Baby (died)

7.Selvaraj
8.Prabhavathy
9.Usha
10.Valli
11.Ranganayaki
12.Lakshmi
13.Sivaji
14.Venkatesh
15.Matheswari
16.Akila
17.Srimathi
18.Hemalatha
19.Banureka



WEB COPY

20.Sureshkumar
 21.P.Rameshkumar
 22.S.Chelladurai
 23.S.Manickam
 24.M.Leelavathi
 25.M.Kayalvizhi
 26.K.Baskaran
 27.Arunkumar, Manickam @ Arunkumar
 28.Thangam
 29.Jagathambal
 30.Suresh
 31.Subha
 32.Sujatha
 33.J.Rajendran .. Respondents
 (Respondents 1 to 19, 23, 24
 27 to 32 exparte in Court below)

PRAYER: Civil Revision Petition is filed under Article 227 of the
 Constitution of India, against the fair order and decretal order dated
 22.08.2013 made in I.A.No.605 of 2010 in O.S.No.283 of 2010 on
 the file of the Principal Subordinate Court, Salem.

For Petitioners : M/S.J.Prithvi for
 Mr.S.Kaithamalai Kumaran
 For R1 to 19,23,24,
 27 to 33 : Exparte
 For R20 to 22,25 : No Appearance
 For R26 : Given up

ORDER

The Civil Revision Petition is filed against the fair and decretal
 order dated 22.08.2013 made in I.A.No.605 of 2010 in O.S.No.283
 of 2010 on the file of the Principal Subordinate Court, Salem.

2. The petitioners are the plaintiffs, respondents 1 to 6 are the defendants 3 to 8, respondents 7 to 32 are the defendants 10 to 35 and 33rd respondent is the proposed party in O.S.No.283 of 2010. The petitioners filed suit against the respondents 1 to 32 and others for partition. The respondents 20 to 26 filed written statement and are contesting the suit. The petitioners filed I.A.No.605 of 2010 to implead the 33rd respondent as defendant 36 in the suit.

3. According to the petitioner, the proposed party/33rd respondent purchased second item in A schedule property from second defendant (since deceased on 07.08.2010) pending suit. In view of the said purchase, the proposed party/33rd respondent is necessary party to the suit.

4. The 33rd respondent/proposed party filed counter affidavit and submitted that he is a bonafide purchaser and the petitioners are strangers to the suit property and submitted that he is not necessary party to the suit.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and

averments of the petitioner that 33rd respondent is the proposed party, pending suit, dismissed the application on the ground that the said sale is hit by the principles of *lis pendens* and at the conclusion of the trial, 33rd respondent will get whatever the right his vendor/second defendant gets in the suit property.

6. Against the said order of dismissal dated 22.08.2013 made in I.A.No.605 of 2010, the present Civil Revision Petition is filed by the petitioners.

7. Though notice was served on the respondents 20 to 22, 25 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel. Though 33rd respondent has entered appearance through counsel, there was no representation on behalf of him on 10.10.2017 and 12.10.2017 i.e., today.

8. Heard the learned counsel for the petitioners and perused the materials available on record.

9. The learned counsel appearing for the petitioners relied on the judgment reported in **2007 (3) CTC 332 (Dhanalakshmi and others Vs. P.Mohan and others)** in support of his contention:

"5. Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of the respondents Nos.2,3,4 & 6. It is not in dispute that the first respondent P.Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein in the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the other co-shares, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trial Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings."

10. Any purchase pending suit is hit by the principles of *lis*

pendens, the subsequent purchaser is bound by the decree that may be passed against his vendor. Generally, the subsequent purchaser, is impleaded in order to protect his interest as the vendor/defendant may not properly contest the suit, after sale to the purchaser. In the present case, the 33rd respondent/proposed party himself has stated that he is not necessary party to the suit and the petitioners are strangers to the suit property. The facts in the judgment relied on by the learned counsel for the petitioners is different from the facts of the present case. In that case, the subsequent purchaser filed application for impleading himself as a party to the suit. The said application was rejected. The Hon'ble Apex Court held that the proposed party, who is subsequent purchaser is necessary party in equity, while properties are allotted in final decree application. In the present case, the plaintiffs have filed application for impleading the subsequent purchaser, who resisted the same on the ground that the petitioners are strangers to the suit property and he is not necessary party. The stand taken by the proposed party amounts to agreeing to accept the decree that may be passed against his vendors in both the preliminary decree and final decree.

11. In view of such stand taken by the proposed party, the

learned Judge has rightly dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 22.08.2013.

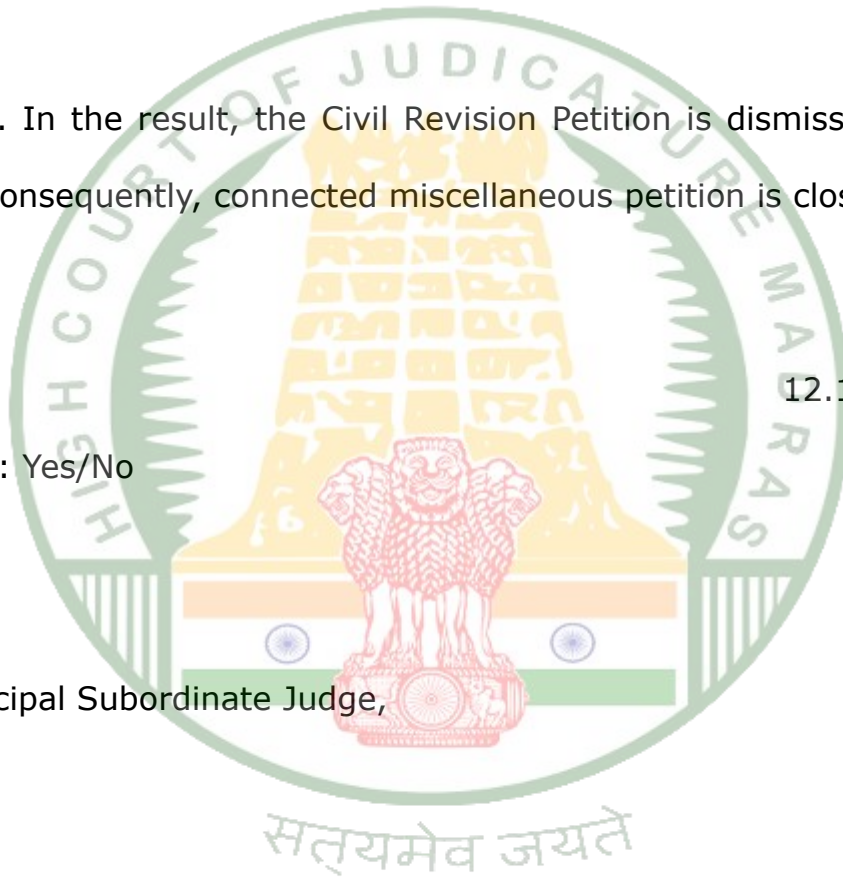
12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.10.2017

Index : Yes/No
dm/kj

To

The Principal Subordinate Judge,
Salem.



WEB COPY

V.M.VELUMANI, J.

dm/kj



C.R.P.(PD)No.255 of 2014
& M.P.No.1 of 2014

12.10.2017

WEB COPY