



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2017

(Reserved on 19.06.2017)

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.2078 of 2016

and

CMP (MD) No.9706 of 2016

1) Rani

2) Meenakshi

3) Subbulakshmi

4) Kannan

... Petitioners

vs.

1) D.Sellathambi

2) S.Sumathi

3) Minor S.Suresh

4) Minor S.Deepa

(Minor Respondents 3 & 4 are represented by their father 1st respondent)

5) D.Periyanayaki

6) R.Kamaleshwari

7) D.Rajakumari

... Respondents

Petition filed under Section 115 of the Civil Procedure Code, against the fair and decretal order in E.A.No.36 of 2008 in E.P.No.19 of 2006 in O.S.No.116 of 1986 dated 1.8.2016 on the file of the Sub Court, Pudukkottai.

For Petitioners : Mr.N.Balakrishnan

For R1 to R4 : Mr.R.Vijayakumar

R5 to R7 : Given up

ORDER

The property which is subject matter of the present revision petition originally belonged to one Dharmalingam. On the demise of Dharmalingam, suit for partition was filed by his wife along with her daughters against her six sons and others. Pursuant to the preliminary decree passed on 29.07.1987, declaring 1/3rd share to the plaintiffs, final decree was passed on 31.12.2004.

2.As per the final decree, out of 1 acre and 44 cents of total extent of land and building thereon, 64 cents of land and building thereon portion marked as 'D' in the Commissioner plan was allotted to the plaintiffs. 32 cents of land and buildings thereon portion marked as 'B' was allotted to the 4th defendant and the legal representatives of the deceased 7th defendant namely, S.Sugumari W/o. Sellathambi who were impleaded as defendants 31 to



33 pending suit. 16 cents of land and buildings thereon portion marked as 'C' in the Commissioner plan was allotted to the 5th defendant.

3. In E.P.No.19/2006 filed by the 4th defendant and defendants 31 to 33 for delivery of possession of the property marked as 'B' in the Commissioner plan, the revision petitioners herein claiming themselves as bonafide purchasers for value pending litigation have filed E.A.No.36/2008 under Section 47 CPC alleging that the decree in O.S.No.116/1986 is in-executable decree and obtained by fraud, hence, a void decree.

4. According to the revision petitioners, they had no knowledge about the pendency of the suit when they had purchased the property. They came to know about the suit only on 28.02.2008 when they were threatened to be evicted through the process of court. They are purchasers of the petition mentioned A to C schedule property from one Shanmugam on 23.01.2003. The revision petitioners trace the title of their vendor Shanmugam from the second defendant/D.Ramanathan who according to the revision petitioners sold his separate portion in the property to one Sundara Vadivel, who in turn sold the property to 8th defendant/Rasammal W/o.Balasundaram/1st defendant. She in turn sold the property to Shanmugam on 26.12.2001 who is the vendor of the revision petitioners.

5. The Execution Court dismissed the petition holding that the revision petitioners claim title through the 1st defendant and 8th defendant in the suit. The predecessor in title were parties to the suit. The vendors of the revision petitioners were parties in the final decree proceedings I.A.No.218/2000 since they were in occupation in a portion of the suit property as tenants under the 1st defendant. The 4th petitioner Kannan has deposed that he is residing near the suit property and he had knowledge about the pendency of the partition suit. This part of testimony falsifies the averment in the petition that the revision petitioners came to know about the suit and decree only on 28.02.2008.

6. The Trial Court after scrutiny of the testimony of the 4th revision petitioner who was examined as PW1 and 8 documents marked on behalf of the revision petitioners held that the petition is devoid of merits and filed with unclean hands by suppressing the vital fact, hence dismissed the petition.

7. Aggrieved by the order of dismissal, the present revision petition is filed. In the revision petition, it is contended that there was only one preliminary decree in favour of the plaintiffs determining their 1/3rd share each and there is no supplementary preliminary decree in favour of the defendants. While so, the final decree allotting 2/9 share for defendants 4 and 31 to 33,



1/9 share for 5th defendant is erroneous. Further, it is contended that having purchased the property pendente lite and being bona fide purchasers of the property mentioned in the petition schedule which falls under 'D' marked portion of Commissioner's plan, allotting the said portion of the land to the 2nd defendant/Ramanathan will adversely affect the interest of the petitioner.

8.The main contention of the revision petitioners is that their predecessor in title namely, 1st defendant Balasundaram and his wife Rasammal were allotted 'A' marked portion but they have sold property which falls under 'B' marked portion to Shanmugam. Shanmugam in turn sold to several persons including the 4th petitioner namely, Kannan and the property which he has purchased falls in the portion marked as 'B' in the Commissioner's plan which is allotted to the 2nd defendant/Ramanathan. Without taking note of the subsequent alienation by the 1st defendant and the bonafide purchase of the revision petitioners, the division of the property has been done by the Advocate Commissioner and the same has been accepted by the Court below which has adversely affected the interest of the petitioners. Therefore, without declaring the right of the defendants 4 and 31 to 33 by way of a preliminary decree, passing a final decree allotting 2/9 share in the suit property is illegal. It is also contended that the testimony of PW1 (4th petitioner/Kannan) is misconstrued by the Court and has come to the conclusion that he has approached with clean hands though knowing well about the pendency of the suit.

9.Heard the learned counsel for the petitioners and the respondents. Perused the records.

10.The preliminary decree in O.S.No.116/1986 reveals that the said suit filed for partition was allowed and preliminary decree was passed on 29.07.1987. While passing the preliminary decree, the Court has determined each of the legal heirs of Late Dharmalingam are entitled for 1/9 share. Accordingly, 3 plaintiffs were entitled for 3/9 share in the suit property total extent of 1 acre and 44 cents. Thereafter, I.A.No.216/2000 has been filed to implead the defendants 35 to 40 and the same was allowed on 07.06.2000. They are none other than P.Raja S/o.Palanivelu, Moorthi S/o.Balakrishnan, Sultan S/o.Sheik Moideen, Karuppaiah S/o. Rengasamy, Rajamanickam S/o. Rengaswami and Palanivelu S/o. Govindan. They were all impleaded since they were tenants in occupation of the suit property. Palanivelu is husband of the 1st petitioner Rani. In the suit, the husband of the 2nd petitioner herein/Shanmugam Pillai, husband of the 3rd petitioner herein/Selvaraj were arrayed as defendants 23 and 25. Therefore, the revision petitioners herein are legal heirs of the parties to the suit. Having contested the suit for partition, their contention that they have right to challenge the decree as inexecutable under Section 47 CPC is not sustainable in view of the judgment of the High Court rendered in the case of



Rajamanickam vs, Balasubramanian and another reported in **2011 (2) TNLJ 17 (Civil)**.

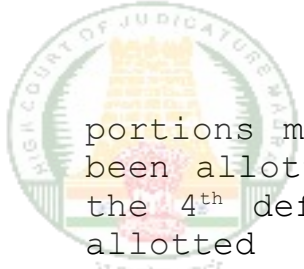
11.The revision petitioners were impleaded as party stakeholders in the property either as a tenant or co-sharer. There is no base to file the present petition under Section 47 CPC claiming themselves as bonafide purchasers for value without knowing the pendency of litigation. It is something like hiding a pumpkin in morsel of cooked rice. This falsehood has been exposed when the 4th petitioner has been subjected to cross examination who admits his knowledge about the pendency of the suit.

12.The contention of the revision petitioners is that there was only one preliminary decree in respect of the defendants is also incorrect. The defendants 1 to 4 have filed application I.A.No.318/2003 to set aside the ex parte order passed against them in the final decree proceedings and the same was allowed. After examination of witnesses, their share in the suit property has been determined in I.A.No.319/2003 and 2/9 share were allotted to them.

13.Accordingly, amendment petition was also filed in I.A.No.591/2003 to amend final decree and preliminary decree. This petition was allowed on 21.08.2003, but the amendment was not carried out in the respective decree. It is only an omission on the part of the parties but the said omission will not take away the right over the property or it cannot be construed that their shares were not determined and no supplementary preliminary decree was passed. In view of the legal maxim, ''actus curiae neminem gravabit'' (No prejudice shall be caused to anyone due to the fault of the court), such omission to carry out the amendment in the preliminary decree and final decree by no stretch of imagination amounts to fraud.

14.It is also borne by record that the plaintiffs have been allotted and taken possession of the shares allotted to them. E.P.No.19/2006 is preferred by the 4th defendant and his children who are defendants 31 to 33. As per the final decree, they are entitled to get 'B' marked portion shown in the Advocate Commissioner's plan. These revision petitioners claim interest by purchase from D1, D2 and D10. These defendants have not sought for any determination of share nor filed application for allotting their share. While so, in the absence of any preliminary decree in favour of the predecessor in title through whom the revision petitioners claimed right based on pendente lite transaction, the revision petitioners have no locus to sustain the petition under Section 47 CPC.

15.It is pertinent to note that as per the final decree, the entire suit property extending 1.44 cents has been divided into 4



portions marked as A, B, C and D. While 'D' marked portion has been allotted to the plaintiffs 'B' marked portion is allotted to the 4th defendant and defendants 31 to 33. The 5th defendant is allotted 'C' marked portion. 'A' marked portion remains untouched. The vendors of the revision petitioners have failed to make out appropriate petition for determining and allocation of their shares.

16. Admittedly, these revision petitioners have purchased the properties from their vendors as if it is separate property of their vendors, while in fact the portion of the property they purchased was not the separate property of the predecessors in title. The Trial Court has rightly dismissed the petition and there is no merit in the revision petition.

Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl side)

/ True Copy /

Sub Assistant Registrar (C.S.)

To

The Sub Court,
Pudukkottai.

Nbi

MAS/MR-KKR/SAR2:12.07.2017:5P-2C

order made in
CRP (NPD) (MD) No.2078 of 2016
27.06.2017