

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).No.668 of 2011
and
M.P.No.1 of 2011

1. S.Panneerselvam Nadar (Deceased)

2.P.Amsavalli

3.P.Sendhurpandian

... Petitioners

(Petitioners 2 & 3 brought on record as Legal Representatives of the deceased 1st petitioner vide order of Court dated 06.02.2017 by MVMJ, made in C.M.P.No.1091 of 2017 in C.R.P.No.668 of 2011.)

Vs

1.Minor Harikrishnan

S/o.D.N.Sathya-Represented by
Mother Next Friend Sundarammal
W/o.D.N.Sathya

2. D.N.Sathya @ Nandana Sathya

3. Suresh Sathya Babu

4. Joseph Sathya

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order and Decree made in I.A.No.115

of 2000 in O.S.No.256 of 1994 on the file of the Subordinate Judge, Vellore District, dated 21.10.2010.

For Petitioner : Mr.K.A.Ravindran

For 1st Respondent : Mr.K.N.Pandian

For Respondents 2 to 4 : No Appearance

ORDER

The 4th defendant / 4th respondent in I.A.No.115 of 2000 in O.S.No.256 of 1994, on the file of the Subordinate Judge, Vellore District, challenges in this revision an order dated 21.10.2010, appointing an Advocate-Commissioner to enable the Court to pass a final decree pursuant to a preliminary decree for partition passed by the said Court on 08.10.1998.

2. The facts that may be necessary for a proper adjudication of the present matter may be stated briefly:

- The plaintiff, a minor, had filed a suit for partition against his father D.N.Sathya alias D.Nandanasathya as 1st defendant and his consanguine brother/step-brother, as the 2nd defendant and his uncle Joseph Sathya, brother of the 1st defendant, as the 3rd defendant.

- The subject matter of the suit is a plot measuring 120 feet x 25 feet with a house bearing Door No.2/199 at Bazaar Street, R.K.Pet, Tiruvallur District. There is another property which is described in B schedule and the same is not relevant for the current purpose. In the suit, an exparte preliminary decree was passed where under, the plaintiff was granted 1/3rd share in the plaint A Schedule property. The revision petitioner was not impleaded as a party array to the said suit.
- During the pendency of the suit, the petitioner has purchased 'A' schedule property either entirely or in part (that could not be adequately ascertained from rival submissions). On 09.07.1994, when the petitioner came to know of the passing of the preliminary decree, he approached the trial court for setting aside the exparte decree along with an application for condoning a delay of 774 days in preferring the former application. The petition to condone the delay was taken on file as I.A.No.217 of 2000 and the trial court dismissed the same.
- Aggrieved by the same, the petitioner approached this Court in C.R.P.(NPD) No.1595 of 2005 and here, the petitioner was partially successful, in that he was granted leave to participate in

the final decree proceedings. In pursuant to this order, the first revision petitioner impleaded himself in the final decree application which is since been pending in I.A.No.115 of 2000. In this Interlocutory Application, on 21.10.2010, the Sub-Court has appointed Commissioner to assist the Court with his report. Aggrieved by the same, the petitioner has approached this Court.

3. Heard Mr.K.A.Ravindran, the learned counsel appearing for the petitioners and Mr.K.N.Pandian, the learned counsel appearing for the 1st respondent. There is no appearance for the respondents 2 to 4.

4. The learned counsel for the petitioners argued that since the filing of this revision petition, the Commissioner has filed his report, wherein he has not made any allotment to the petitioner based on the sale deed he had obtained from the 1st defendant. He also touched upon the allegation that the entire property was self-acquired property in the hands of the 1st defendant and that a suit itself was a collusive one. He also highlighted that the petitioner was represented in this proceedings by the 2nd wife of the 1st defendant and that itself would indicate that instituting the suit is collusive and mischievous.

5. Responding to the same, the learned counsel for the 1st respondent/plaintiff/petitioner in the final decree proceedings, argued that the petitioner has approached this Court with a limited prayer challenging the order appointing the Commissioner, and he may not be let to re-open the preliminary decree, as it has become final as against him. This apart, he is a *pendente lite* purchaser and consequently is bound by doctrine of *lis pendens*.

6.1 There is substantial merit in what the learned counsel for the respondents has submitted. First, the petitioner is a *pendent lite* transferee of 'A' schedule property or parts thereof and necessarily he is bound by the decree. Secondly, even his attempt to have the preliminary decree set aside is lost to them Vide order of this Court in C.R.P.(NPD).No.1595 of 2005. Having stated thus, inasmuch as the 1st defendant too was allotted a share in the suit properties even according to preliminary decree, it is only appropriate to allot to the Revision Petitioners such portion which may be allotted to the 1st defendant. This apart, since the petitioner claims that he has purchased a specific property from the 1st defendant and is also in possession and enjoyment thereof, subject to such equities as may

prevail in favour of the other sharers, the Court below can even consider allotting the property purchased by the petitioner to him.

6.2 When there are adequate mechanisms available to remedy the cause of the petitioner, to halt the Commissioner from suggesting the modes of division may not be appropriate. It is submitted at the Bar, that the Advocate Commissioner has since filed his report and technically that which the petitioner wants to avoid has already been performed and hence nothing survives in this Revision. Here, the learned counsel for the petitioners would submit that no allotment has been made to the petitioner.

6.3. The Court below may therefore, look into Commissioner's report and ascertain the possibility of allotting the property which the petitioner has purchased subject to equities in favour of all the parties to the proceedings. In this context, even the share of the 1st defendant in the 2nd schedule of the property can also be reckoned by the Court below for adjusting such equities. If the Commissioner's report now available before the trial court is considered insufficient to assist the Court, the trial Court is at liberty to appoint the same Commissioner if available, to suggest different modes based on what is herein

observed. The Court below is directed to complete the said exercise within a period of six months from the date of receipt of a copy of this order.

7. With the above direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index:Yes/No

ssn

To

The Subordinate Judge,
Vellore District.

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N.SESHASAYEE, J.,
ssn



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