

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition(PD) No.3867 of 2007

and

M.P.No.1 of 2007

Sellamuthu

.. Petitioner

Vs.

1.Tamilarasi

2.Veerapan

3.Sellamuthu

4.Duraisami

5.Ramasami Gounder

6.Periasami

7.Somasundaram

8.Pushpathal

9.Valliathal

.. Respondents

Revision filed under Article 227 of Constitution of India against the fair and decretal dated 22.03.2007 made in I.A.No.138 of 2007 in I.A.No.173 of 2005 in O.S.No.146 of 2005 on the file of the District Munsif Court, Kangayam.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.N.Manoharan (for R1)

ORDER

This revision is directed against the order dated 22.03.2007 passed in I.A.No.138 of 2007 in I.A.No.713 of 2005 in O.S.No.146 of 2005 on the file of the District Munsif Court, Kangayam, dismissing the petition filed under Order 1, Rule 10(2) CPC seeking to implead the petitioner herein as respondent No.11 in I.A.No.713 of 2005. The petitioner is a third party to the suit proceedings.

2. The petitioner has filed I.A.No.138 of 2007 under Order 1, Rule 10(2) CPC to implead him as respondent No.11 in I.A.No.713 of 2005 alleging that the suit property commonly belonged to Karuppa Gounder's sons Sennimalai Gounder and Veerappa Gounder. The first defendant Komarasami Gounder and Palanisami Gounder are the legal heirs of Sennimalai Gounder and third defendant Komarasami Gounder and the sixth defendant Ramasami Gounder are the legal heirs of Veerappa Gounder. Defendants 7 and 8 are the sons of 6th defendant. It is alleged that Palanisami Gounder had two wives. Subbarayan and Samiathal were born through first wife and the second wife has no

issue. Sennimalai Gounder bequeathed his share in the suit properties to his grand-son Subbarayan through a Will registered as Document No.21 of 1950. Subbarayan sold properties in S.No.47/1 and 62/A measuring an extent of 84½ cents with common 1/6th share in the common well and electric motor pumpset to the petitioner and defendants 5 and 7 through a sale deed on 14.08.1987. According to the petitioner, he is entitled to 1/3rd share in the purchased property and defendants 5 and 7 each are entitled 1/3rd share.

3. The case of the petitioner is that on 06.01.2007, when the Advocate Commissioner visited the suit properties for division of the same, he came to know about the filing of the suit, preliminary decree for partition passed and also filing of the final decree application by the first respondent. Immediately, the petitioner engaged an Advocate and verified the Court records and he was advised to file petition to implead himself as the 11th respondent in the final decree application (I.A.No.713 of 2005). Hence, the petitioner seeks to implead him as 11th respondent in I.A.No.713 of 2005.

4. Resisting the petition, the first respondent/plaintiff filed the counter stating that the petitioner is the son-in-law of the second

defendant and he got knowledge of the suit and the proceedings from the beginning. This petition has been filed because of inducement of the second defendant after a period of 20 years with an intention to obstruct the finality of the suit and prevent the first respondent from enjoying the fruits of the decree. According to the first respondent, the sale deed dated 14.08.1987 referred to by the petitioner is a forged one and the same cannot be relied upon. The petitioner has no locus standi to file the petition.

5. Upon consideration of the rival submissions, the learned trial Court dismissed the petition. Aggrieved by the same, the petitioner has filed the present revision.

6. I heard Mr.S.Saravanan, learned counsel for the petitioner and Mr.N.Manoharan, learned counsel appearing for the first respondent. Perused the materials available on record.

7. The learned counsel for the petitioner submitted that the trial Court failed to follow the law laid down by the Hon'ble Supreme Court that purchaser pendent lite is entitled to be impleaded as party to the proceedings, if his interest in the subject matter is substantial. He

argued that since the petitioner has substantial right in S.Nos.47/1 and 62/A, he is necessary party to the suit proceedings. He would submit that the trial Court went wrong in not exercising its discretion by allowing the application to implead the petitioner. Finally, the learned counsel argued that the trial Court went wrong in holding that the purchase by the petitioner is non-est. In support of his contention, the learned counsel cited decisions in *Khemchand Shankar Choudhari and another v. Vishnu Hari Patil and others*, reported in (1983) 1 SCC 10 and *Thomson Press (India) Ltd. V. Nanak Builders and Investors Private Limited and others*, reported in (2013) 5 SCC 397.

8. The learned counsel for the first respondent submitted that the petitioner is the son-in-law of the second defendant and in cahoots with the second defendant, the petitioner has filed the present petition. He would submit that the trial Court has rightly dismissed the petition seeking to implead a third party in the final decree petition. The learned counsel argued that lis pendens purchase is hit by Section 52 of the Transfer of Property Act and therefore, the petitioner cannot be impleaded as respondent No.11 in the final decree petition. In support of his contention, the learned counsel relied upon the decisions in *Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Buhna*

and others, reported in (2009) 9 SCC 689; Satyawati v.Rajinder Singh and another, reported in (2013) 9 SCC 491.

9. The point that arises for consideration is whether the trial Court was right in dismissing the petition to implead the petitioner in I.A.No.713 of 2005 as 11th respondent?

10. The first respondent herein has filed the suit O.S.No.11 of 1986 originally before the learned Sub Court, Dharapuram against the respondents 2 to 9 for partition and separate possession. The defendants 1, 2, 5 to 8 contested the suit by filing written statement. In their written statement, the defendants 1, 2, 5 to 8, particularly, defendants 5 and 7, have not stated about the purchase of the property by the petitioner from one Subbarayan through sale deed dated 14.08.1987.

11. By a judgment dated 29.11.1988, the suit was decreed in respect of partition. However, the trial Court decree says that the second defendant was a cultivating tenant and the possession has to be taken from the second defendant by invoking the provisions of the Tamil Nadu Cultivating Tenants Protection Act. Aggrieved by the said

finding of the trial Court, the first respondent filed A.S.No.404 of 1989 before the High Court. By a judgment dated 18.06.2003, a Division Bench of this Court allowed the appeal holding that the second defendant is not a cultivating tenant as contemplated under the Tamil Nadu Cultivating Tenants Protection Act, 1955 and declared that the first respondent is entitled to a decree for possession as well. The operative portion of the judgment reads thus:

"25.In the result, the appeal is allowed. There will be a decree to the following effect,

The suit property shall be divided as four equal shares with reference to good and bad soil.

On such division, plaintiff will be entitled to one such share.

The plaintiff shall be put in possession of such share in the suit properties

There will be no order as to costs."

12. Thereafter, the first respondent has filed I.A.No.713 of 2005 for passing final decree. The second defendant has filed the counter in I.A.No.713 of 2005. Since the averments in the counter are not relevant to the issue in question in the present revision, the same are

not referred to in this order. When the trial Court appointed an Advocate Commissioner to inspect the suit property for division, the petitioner filed I.A.No.138 of 2007 to implead him as 11th respondent in I.A.No.713 of 2005 on the basis of *lis pendens* purchase.

13. As stated above, the petitioner, who is a third party, has filed I.A.No.138 of 2007 stating that the predecessors in title Sennimalai Gounder bequeathed his share in the suit properties in favour of his grand-son Subbarayan through the Will registered as Document No.21 of 1950 before the Kangayam Sub Registrar Office and from the said Subbarayan, the petitioner and the defendants 5 and 7 have jointly purchased 84½ cents in S.No.47/1 and 62/A with common 1/6th share in the common well, electric motor pumpset etc. on 14.08.1987. Therefore, the petitioner and defendants 5 and 7 each have a common share of 1/3rd in the said survey numbers.

14. The main contention of the petitioner before the trial Court as well as before this Court is that he came to know about the suit proceedings only on 06.01.2007, when the Advocate Commissioner visited the suit property for division.

15. As rightly argued and as rightly held by the trial Court, the suit proceedings are going on for the past 21 years from the year 1986 at the time of passing the impugned order and if really, the petitioner is in joint possession of the alleged purchased property, definitely he would have knowledge of the suit proceedings. Therefore, the plea of the petitioner that he had knowledge of the suit proceedings only on 06.01.2007 is not acceptable and highly unbelievable. As rightly held by the trial Court, the other defendants would have instigated the petitioner to file such a petition in order to protract the proceedings.

16. The decisions relied on by the learned counsel for the petitioner in *Khemchand Shankar Chudhari (supra)* and *Thomson Press (India) Limited (supra)* have been rendered in different facts and circumstances of the case and the said decisions are not applicable to the case on hand. Therefore, this Court does not propose to traverse elaborately into those decisions in this order.

17. Admittedly, the suit was filed on 28.01.1986 and the alleged purchase by the petitioner was made on 14.08.1987, which would clearly show that pending suit, the petitioner had purchased portion of the suit properties. As per Section 52 of the Transfer of Property Act,

even if the petitioner has purchased a portion of the property, his purchase is also bound by the preliminary decree and final decree of the suit, as the petitioner is a purchaser pendente lite. Therefore, there is no necessity to implead the petitioner as party in the final decree proceedings.

18. It is settled law that transfer pendent lite is non-est in the eye of law. Therefore, the contention of a party that he was not party to the proceedings and he was not impleaded as party and consequently, the decree is not binding on him, is not sustainable.

19. In *Shub Kartan Bubna @ Shub Karan Prasad Bubna* (supra), the Hon'ble Supreme Court discussed the agony of the decree holder in a partition suit in getting the share divided after the final decree passed.

20. The question whether preliminary decree can be reopened has been considered by the Hon'ble Supreme Court in *T.Ravi v. B.Chinna Narasimha*, reported in AIR 1963 SC 992.

21. In *T.Ravi* (supra), the Hon'ble Supreme Court held thus:

"37. In the instant case preliminary decree was passed in the year 1979 and the shares were declared to the aforesaid extent of the respective parties therein who were the heirs of Late Nawab Jung. Hamid Ali Khan, defendant No.1, had only 14/104th share in the disputed property. Preliminary decree dated 24.11.1970 has attained finality which was questioned in appeal on limited extent in the High Court which has attained finality by dismissal of LPA on 12.10.1977. Thus, the determination of shares as per preliminary decree has attained finality, shares of the parties had been crystallised in each and every property. Purchaser pendent lite is bound by the preliminary decree with respect to the shares so determined and it cannot be re-opened and whatever equity could have been claimed in the final decree proceedings to the extent of vendor's share has already been extended to the purchasers."

22. As stated supra, lis pendens purchase by the petitioner is hit by Section 52 of the Transfer of Property Act and there is no need to implead the petitioner as 11th respondent in the final decree petition

being I.A.No.138 of 2007. Further, there is every possibility of thinking that the petitioner has been set up by the other defendants to protract the proceedings. It is also seen that defendants 2, 5 to 8 having contested the suit, have conveniently failed to file their counter opposing the impleading petition.

23. In the instant case, the preliminary decree has attained finality. Therefore, there is no question of impleading the petitioner as respondent No.11.

24. As stated supra, conveniently, the petitioner kept quiet for long number of years and when the Advocate Commissioner visited the suit properties for division, with an ulterior motive and to protract the proceedings and also to defeat the first respondent from enjoying the fruits of the decree, he filed the petition seeking to implead him as party respondent in the final decree petition, which cannot be entertained and the same has been rightly dismissed by the trial Court.

25. For the foregoing reasons, I find that there is no error in the order of the trial Court warranting interference of this Court.

26. In the result:

(a) this Civil Revision Petition is dismissed and the order dated 22.03.2007 made in I.A.No.138 of 2007 in I.A.No.713 of 2005 in O.S.No.146 of 2005, on the file of the learned District Munsif Court, Kangayam is confirmed;

(b) the learned District Munsif Court, Kangayam is directed to complete final decree proceedings in O.S.No.146 of 2005 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2018

vs

Index : Yes
Internet : Yes

To

The District Munsif,
Kangayam.

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M.V.MURALIDARAN,J.

VS



Pre-delivery order made in
C.R.P.(PD)No.3867 of 2007
and
M.P.No.1 of 2007

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