



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2017
DELIVERED ON : 28.04.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.2492 of 2014 (PD)
and
M.P. (MD) .No.1 of 2014

C.Arul Thyagarajan

.. Petitioner /
2nd respondent / 1st defendant

Vs.

K.Moses (died)

1.L.Ronickam
2.M.Jeyanthi
3.M.Rajasekar
4.M.Inbasekaran

.. Respondents 1 to 4 /
Petitioners 1 to 5 / 3rd parties

5.C.Sakunthala

... 5th respondent/Plaintiff

6.C.Hitler
7.C.Subitha Devi
8.C.Kaladevi
9.Rajan
10.Sriran

.. Respondents 6 to 10 /
Respondents / Defendants 2 to 5

PRAYER: Petition filed under Article 227 of C.P.C., praying to call for the records pertaining to the fair and decreetal order, dated 27.08.2014, passed in I.A.No.1175 of 2007 in I.A.No.423 of 1996 in O.S.No.130 of 1989 on the file of the 1st Additional District Munsif, Nagercoil.

For Petitioner : Mr.T.Arul
For respondents 1 to 4 : Mr.S.Kadarkarai
For respondents 5, 6 & 8 : Mr.R.Nandakumar

ORDER

This civil revision petition has been filed by the revision petitioner / 1st defendant, as against the order allowing the impleading petition filed by the third parties.

2. The brief facts which are necessary to decide this revision petition are as follows:

The 5th respondent / plaintiff had filed the suit for partition. After contest, a preliminary decree was passed on 13.10.1995 by allotting 7/36 share in the suit schedule 1 to 3 of properties and rejecting the claim regarding the suit 4th schedule of property. Subsequently, final decree was also passed on 21.04.2004, against which an appeal was filed by the petitioner / 1st defendant and the same was allowed on 09.01.2005, remanding the matter back to the file of the trial Court with a direction to appoint an Advocate Commissioner and to pass the final decree after getting report from the Commissioner report and plan. While so, one Moses had filed I.A.No.1175 of 2007 before the trial Court seeking to implead him in the final decree proceeding stating that he has, subsequently, purchased the major share of the suit 2nd schedule property from the respondents 6 to 10 herein. During the pendency of the said petition, the said Moses died and the respondents 1 to 4 herein were impleaded as his LRs. The Court below has allowed the said impleading petition holding that they are necessary parties to be impleaded for effective adjudication of the dispute. Aggrieved by the said order, the petitioner / 1st defendant has come up with this petition.

3. The learned counsel for the petitioner / 1st defendant would submit that in the suit 2nd item of the property, the father of the respondents 1 to 4 herein viz., Moses was a tenant and when so far no metes and bounds partition has been effected with respect to the plaint schedule properties, the subsequent purchaser - Moses, who is stated to have purchased major portion of the suit 2nd item of the property, ought not to have purchased the property and the sale deeds stated to be executed by the respondents 6 to 10 herein / defendants 6 to 8 shall not be valid. He would further submit that in order to grab the valuable portion of the property, the respondents 1 to 4 herein, colluding with the other respondents, have stated that their father have purchased major portion of the property in question. The respondents 1 to 4 herein are not necessary parties to decide the lis between the parties. The Court below, without considering the said aspect, has erroneously allowed the said impleading petition and therefore, the order impugned in this petition is liable to be set aside. Thus, he prayed to allow this civil revision petition.

4. The learned counsel appearing for the respondents in unison submitted that the father of the respondents 1 to 4 herein were purchased major portion of the suit 2nd schedule property only after the remand order was passed in the final decree and hence, it cannot be said that the same was purchased pending the suit for partition. He would further submit that it is not the case of the revision petitioner that the vendors of the subsequent purchasers viz., the respondents 1 to 4 herein are not having any share in the property in question. After the sale of the property, the vendors viz., defendants 2 to 4 have no interest in the said property and



therefore, the respondents 1 to 4 have to be impleaded as parties in the final decree proceedings. The Court below after considering the above aspect, has allowed the said petition and the same need not be interfered with. Thus, they prayed to dismiss the civil revision petition.

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5. Heard the learned counsel for the parties and perused the records carefully.

6. The suit is filed for partition in the year 1989. The preliminary decree was passed on 30.10.1995. The final decree was also passed on 21.04.2004. Against the final decree, the petitioner / 1st defendant had filed an appeal and the first appellate Court, after hearing both sides, set aside the said final decree and remitted back the matter to the file of the trial Court for fresh consideration, after appointing and getting report from the Advocate Commissioner about the metes and bounds of the properties. For arriving at the above conclusion, the first appellate Court has held in paragraph No.16 as follows:

"16.The suit properties are located in Nagercoil Municipality limit. The properties are highly valuable properties. Without providing the pathway to other property, they cannot be reached. There will be no market value to that properties. Further, without providing the pathway to the other properties mentioned in Exs.C3 and C4, the final decree is not just and equitable."

7. From the above, it is clear that the final decree was passed without fixing the proper metes and bounds and therefore, it was remitted back to the file of the trial Court. When the properties are not specifically partitioned among the parties, it is stated by the respondents 1 to 4 herein that their father have purchased the major portion of the suit 2nd schedule property with specific boundaries from the other sharers. The respondents 1 to 4 have specifically admitted that their father have purchased the property in question, after the remand of the matter with the above specific direction, which would go to show that knowing fully well that there is no specific boundaries fixed in the respect of the property in question, they have purchased the said property. It is also strengthen the submission of the learned counsel for the petitioner / 1st defendant that in order to grab the valuable portion of the property in question, the respondents 1 to 4 herein, colluding with the other respondents, have stated that their father have purchased major portion of the property in question. Hence, this Court is of the view that if the respondents 1 to 4 are impleaded as the parties in the final decree proceeding, it will cause great prejudice to the petitioner / 1st defendant. First-of-all, the rights of the parties, who are fighting from the year 1989, with specific boundaries, have to be decided and then, only the respondents 1 to 4, who are stated to be subsequent purchasers, can seek their right from their vendors.



8. When the question of partition of the properties with specific boundaries is pending, the rights of the respondents 1 to 4 is in peril. Only after allotment of the properties, they can seek their right from their vendors. Hence, the impleadment of the respondents 1 to 4 would lead to complication. The Court below, without considering the above aspects, has erroneously allowed the said impleading petition. Hence, the order impugned in this petition is liable to be interfered with.

9. In the result, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The I Additional District Munsif,
Nagercoil.

+ 1 CC TO Mr.R.NANDAKUMAR, ADVOCATE IN SR No. 64414
+ 1 CC TO Mr.S.KADARKARAI, ADVOCATE IN SR No. 64299

GCG

TE/SV-MMS/SAR-3 : 22/05/2018 : 4P/4C

order made in
C.R.P. (MD) No. 2492 of 2014 (PD)
28.04.2018