

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Orders : 16.09.2019	Date of Pronouncing Orders : 16.10.2019
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CORAM

The Hon'ble Mr.Justice R.PONGIAPPAN

C.R.P.(NPD) No.1633 of 2014

and

M.P.No.1 of 2014

±

C.M.P.No.22388 of 2018

K.Ponnusamy

... Petitioner

Vs.

- 1.Sampath
- 2.Sangeetha
- 3.Priya
- 4.Vaiyapuri
- 5.Kumar
- 6.Uma
- 7.Devi
- 8.Swaminathan
- 9.Jaganath Babu
- 10.Hemant babu

सत्यमेव जयते... Respondents

Prayer :-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 07.01.2013 made in I.A.No.341 of 2012 in I.A.No.659 of 2008 in O.S.No.171 of 2008, on the file of the District Munsif – cum – Judicial Magistrate, Perundurai.

For Petitioner : Mr.T.Murugamanickam
Senior Counsel
Mrs.Zeenath Begum

For Respondent 1 : Mr.S.N.Narasimhulu
For Respondents 2 & 3 : No appearance
For Respondent 4 to 10 : Given up

ORDER

Aggrieved over the order passed by the District Munsif – cum – Judicial Magistrate, Perundurai, in Interlocutory Application No.341 of 2012 in Interlocutory Application No.659 of 2008 in Original Suit No.171 of 2008, dated 07.01.2013, the petitioner herein, who is the 3rd party/subsequent purchaser in the said Suit has filed this Civil Revision Petition.

2. The brief facts of the case, which led to the filing of this Civil Revision Petition is as follows:-

i) The petitioner herein is the 3rd party/subsequent purchaser, in respect to Suit 'B' schedule property related to O.S.No.171 of 2008 pending on the file of the District Munsif – cum – Judicial Magistrate, Perundurai,

ii) The respondents 1 to 3 filed a suit for partition and separate possession in O.S.No.348 of 2002 on the file of the Subordinate Judge, Erode/Trial Court on 19.04.2002. After an elaborate trial, a preliminary decree has been passed by the Trial Court, in the said suit (i.e.O.S.No.348 of 2002) on 05.08.2003. Based upon the said preliminary decree, the respondents 1 to 3 herein filed an application in I.A.No.659 of 2008 before the said Court to pass a final decree in accordance with the preliminary decree dated 05.08.2003.

iii) During the pendency of the final decree proceedings, the 8th respondent Swaminathan filed an application in G.W.O.P.No.99 of 2004 on the file of Principal Subordinate Judge Court, Erode, against his wife i) Rupavathy, ii) Vaiyapuri/ 4th respondent and his son and daughters, who are respondents 5 to 7 herein seeking permission to sell the property of the minor, viz., Item No. 2 of the suit properties to K.Ponnusamy Gounder, who is the petitioner herein. The said application filed by the 8th respondent was allowed and he is permitted to sell the common 1/3rd share in Item No.2 of the suit properties. Subsequent to that, respondents 8 and 9 represented through their Power Agents, Vijayakumar and Swaminathan as guardian of

the minor, executed the sale deed in favour of the petitioner herein. After the said purchase, the petitioner herein filed an application under order 1 Rule 10 CPC and prayed to implead him as a party to the final decree proceedings. The learned District Munsif cum Judicial Magistrate, after referring to a judgment reported in **2001 (1) Law Weekly 615**, came to the conclusion that the sale deed, dated 27.04.2006 executed during the pendency of the suit is hit by doctrine of lis pendens under Section 52 of the Transfer of Property Act, and ultimately, dismissed the Petition filed by the Revision Petitioner, viz., I.A.No.341 of 2012.

iv) Aggrieved over the aforesaid findings of the District Munsif cum Judicial Magistrate, Perundurai, the petitioner herein is before this Court with the present Civil Revision Petition.

3. The learned counsel appearing on behalf of the petitioner would contend that the suit filed by the respondent 1 to 3 is for the relief of partition and separate possession, and though the revision petitioner is a subsequent purchaser, he is entitled to be impleaded in the final decree proceedings, as he has to be construed as proper party, and adding him in the final decree proceedings would avoid the multiplicity of proceedings.

In support of his contention, he placed reliance on a decision of this Court, in the case of [**Shakeela Begam vs Mohammed Yakkub (deceased) and others**] reported in **(2013) 2 MWN (Civil) 718**, and he, therefore, prayed to set aside the order passed by the District Munsif cum Judicial Magistrate, Perundurai.

4. On the other hand, the learned counsel appearing for the first respondent would contend that, though preliminary decree is passed, the same was stayed as per the order passed by this Court. Hence, allowing the Civil Revision Petition is unnecessary for deciding the issue raised before the Court below.

5. Heard the learned counsel for the petitioner as well as the first respondent.

6. It is admitted on either side that the petitioner/3rd party had purchased 1/3rd share of the 'B' Schedule property during the pendency of final decree proceedings. Therefore, by saying that, he is proper and necessary party to decide the final decree proceedings, the petitioner filed an application under order 1 Rule 10 CPC to implead him as a party to the

proceedings.

7. The contention of the petitioner is that, the Lower Court ought not to have dismissed the application filed by the petitioner on the basis that the sale deed, dated 27.04.2006 executed during the pendency of the suit is hit by doctrine of lis pendens under Section 52 of the Transfer of Property Act.

8. Now, on considering the above submission with the factual aspects of the case, it is found that the suit, in O.S.No.348 of 2002 has been filed by the respondents 1 to 3, for the relief of partition and separate possession, in which, preliminary decree has been passed. Pursuant to which, the respondents 1 to 3 herein filed an application in I.A.No.659 of 2008 before the trial Court to pass a final decree and during the pendency of the final decree proceedings, the 8th respondent/Swaminathan filed an application in G.W.O.P.No.99 of 2004 on the file of Principal Subordinate Judge Court, Erode, seeking permission to sell the property of the minor, in favour of the petitioner herein, in which, the respondents 1 to 3 herein are not the parties. The said application filed by the 8th respondent was allowed.

This Court would like to point out here that, under Section 4 of the Guardian and Wards Act, only the District Court is having jurisdiction to deal with the matters in respect of the property of the minors. In this aspect, the learned Principal Subordinate Judge committed an error, in allowing the application filed by the 8th respondent. Subsequent to that, respondents 8 and 9 represented through their Power Agents, Vijayakumar and Swaminathan as guardian of the minor, executed the sale deed in favour of the petitioner herein. Therefore, the petitioner, being a subsequent purchaser, is entitled to be implead as a party to the final decree proceedings. But, the learned District Munsif cum Judicial Magistrate, committed an error in dismissing the application. In this connection, it is relevant and necessary to refer to the judgment relied upon by the learned counsel for the petitioner, in the case of **[Shakeela Begam vs Mohammed Yakkub (deceased) and others]** reported in **(2013) 2 MWN (Civil) 718**, wherein at Para Nos.24 and 25, it is held as follows :-

“According to me, in the reported judgments of the Hon'ble Supreme Court, viz., (2010) 7 SCC 417, (2012) 8 SC 384 and AIR (2005) SC 2209 (supra), the Hon'ble Supreme Court ordered impleadment of transferee pendente lite in a suit for specific

performance holding that the transferee pendente lite has got a substantial interest in the suit property and any decree that may be passed would affect his rights also. But, in a suit for partition, the position is different. In the suit for partition, while passing a preliminary decree, the entitlement of a party to a share in the suit properties is determined. As stated supra, in the suit for partition, if sharers were not impleaded, then, the suit is liable to be dismissed on the ground of non-joinder of necessary parties. But, insofar as the subsequent purchasers are concerned, they cannot be considered as necessary parties and they may only be considered as proper parties.

25. In the judgment reported in (2010) 7 SCC 417 (supra), the Hon'ble Supreme Court defined the term 'proper party', as party, whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person, in favour of or against whom the decree is to be made. It is held that the fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a property party to the suit for specific performance. Therefore, the transferee pendente lite secured right to work out equity in final decree proceeding and

therefore, at the stage of passing preliminary decree, he is not a necessary party, as his interests are taken care of by his vendors. Therefore, the transferee pendente lite are necessary parties for complete, effective and adequate adjudication of the dispute while passing the final decree, as allotment of properties would be made only in the final decree. In such situation, it must be held that the suit is liable to be dismissed for non impleadment of transferee pendente lite and as held by the Hon'ble Supreme Court in the judgment reported in (2007) 1 SC 519, (Dhanalakshmi and others Vs. P.Mohan and others), the transferee pendente lite are entitled to come on records in order to work out the equity in their favour in the final decree proceedings. In that reported case, the persons purchased undivided share of a co-sharers, prior to the filing of the suit for partition and purchasers filed an application to get themselves impleaded in the suit for partition and in that context, the Hon'ble Supreme Court held that by reason of the purchase by a third party of the undivided share in the suit property, the rights of the plaintiff will not be affected and the purchasers, having purchased the property from some of the co-sharers are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. Though in that suit, preliminary decree passed was set aside, according to me, the Hon'ble Supreme Court set aside the

preliminary decree, as applications were filed by the subsequent purchasers to get themselves impleaded in the suit before the passing of the final decree. Nevertheless, as held by the Hon'ble Supreme Court in that judgment, the pendente lite transferees are entitled to get themselves impleaded in the final decree application to work out their equity while allotment of properties.”

9. Thus, by applying the aforesaid principle to the case on hand, herein also, the respondent 1 to 3 filed a suit for the relief of partition. As of now, final decree proceedings are pending for the division of property, and hence, in the said circumstances, in the absence of any details in respect of the subsequent purchaser, who is a proper party, it is difficult for the Court to determine the area, which was proposed to be allotted in favour of the parties having the right over the Suit Schedule Property.

10. Hence, according to me, in order to avoid the multiplicity of proceedings, particularly, in order to enable the parties to work out their rights with respect to the shares allotted to their vendors, it is necessary to add the subsequent purchaser as a party in the final decree proceedings.

Whereas, the Court below, without considering the said aspect, dismissed the Application only on the ground that the petition filed by the petitioner is hit by the doctrine of lis pendens under Section 52 of Transfer of Property Act. The said proposition held by the Court below is not in accordance with the judgment of this Court already referred above. Therefore, the order dated 07.01.2013 passed by the learned District Munsiff cum Judicial Magistrate, Perundurai is liable to be set aside.

11. Accordingly, this Civil Revision Petition is allowed and the order dated 07.01.2013 passed in I.A.No.341 of 2012 in I.A.No.659 of 2008 in O.S.No.171 of 2008 is set aside. The learned District Munsiff cum Judicial Magistrate, Perundurai is directed to implead the Revision Petitioner in the final decree proceedings and directed to pass necessary orders in accordance with law.

12. In the result, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

16.10.2019

rri/sd.

Index : yes/no

Speaking Order/Non speaking Order

To

The District Munsif – cum – Judicial Magistrate,
Perundurai.



R.PONGIAPPAN. J.

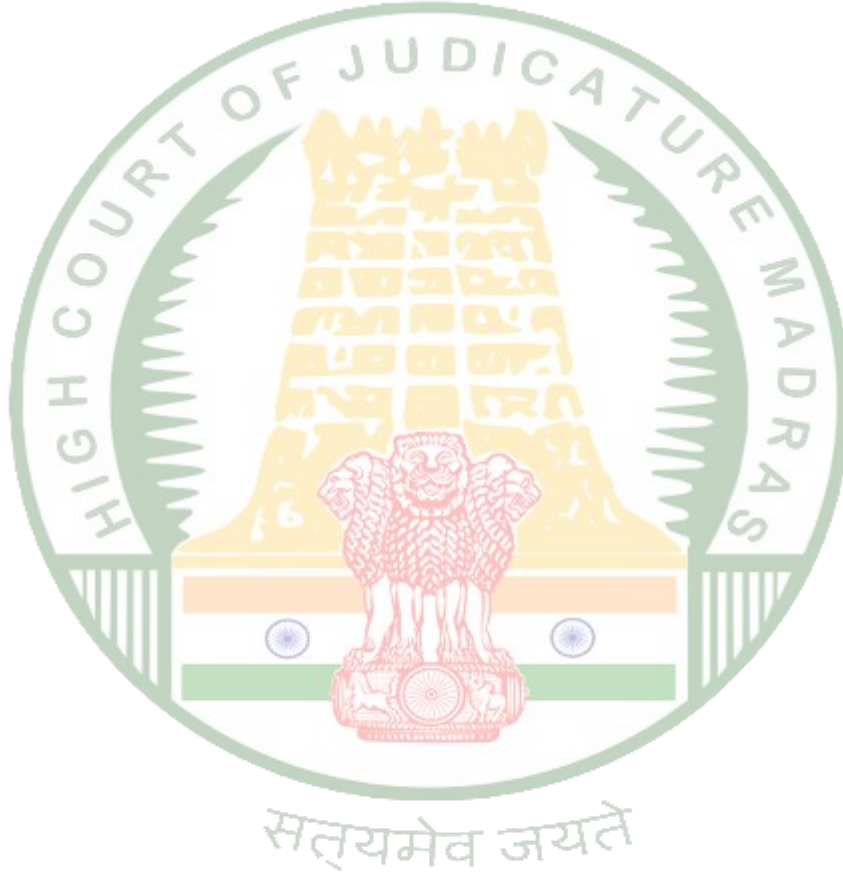
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