



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2019
(Reserved on 29.08.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD)No.794 of 2019
and
CMP (MD)No.4871 of 2019

M.Velusamy

... Petitioner

vs.

- 1) Jagathmala
- 2) Mythilli
- 3) Santhamoorthy
- 4) Yogeswari
- 5) Samundeeswari
- 6) T.T.Meera
- 7) O.S.Suryanath
- 8) O.S.Meganath
- 9) O.S.Chandranath
- 10) I.B.Anandajothi
- 11) J.B.Kumaran
- 12) J.B.Saravanan
- 13) J.B.Guhan
- 14) S.R.Sumithra
- 15) K.S.Sangunthala

... Respondents

Petition filed under Article 227 of the Constitution of India, against the order dated 13.02.2019 made in Tr.O.P.No.26 of 2017 on the file of the Principal District Court, Madurai.

For Petitioner : Mr.A.Arumugam
For R1 to R9 : Mr.T.R.Subramanian
For R10 to R13 : Mr.K.V.Ravichandran

ORDER

Against the dismissal of the transfer petition dated 13.02.2019 made in Tr.O.P.No.26 of 2017 on the file of the Principal District Court, Madurai , the petitioner has filed this revision petition.

2. The revision petitioner is the plaintiff in O.S.No.5/2017 filed against the respondents herein before the I
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Additional District Court, Madurai, for the relief of declaration and permanent injunction in respect of the suit property. In the above suit, the petitioner would contend that originally, the suit property was allotted to the share of one J.B.Anandhajothe/2nd defendant in O.S.No.663/2006 through a registered partition dated 30.04.1975 and she and her sons sold the same to one A.Vasantharaja and others on 19.08.1987 and his legal heirs sold the suit property to the revision petitioner/plaintiff. Since the defendants interfered with the possession of the petitioner over the suit property and disputed the title of the revision petitioner/plaintiff, the above suit has been filed. The petitioner would further state that earlier, suit for partition was filed in O.S.No.303/1999 before the Principal Sub Court, Madurai, in respect of the suit property and other properties. Later on, it was transferred to the Principal District Munsif, Madurai, and renumbered as O.S.No.663/2006, in which, his vendors namely, A.Vasantharaja and his heirs were not impleaded and a preliminary decree was passed. In the final decree proceedings, an advocate commissioner was appointed and when he came to the suit property, the revision petitioner came to know about the filing of the partition suit and therefore, filed O.S.No.5/2017 for declaration and permanent injunction. Pending the above suit, the petitioner filed Tr.O.P.No.26 of 2017 on the file of the Principal District Court, Madurai, to transfer O.S.No.663/2006 and connected I.As to the I Additional District Court, Madurai, to be tried along with O.S.No.5/2017 filed by him. The respondents 1 to 5 herein filed counter opposing the transfer petition stating that the petitioner has purchased the suit property after the passing of preliminary decree in O.S.No.303 of 1999 on the file of the Sub-Court, Madurai, on 11.10.2000 and hence, the sale is vitiated and only to harass the respondents, the petitioner has filed the transfer petition. The Court below finding that the alleged purchase of suit property by the petitioner was during the pendency of the partition suit, thereby hit by the doctrine of *lis pendens*, dismissed the transfer petition, against which, this revision petition is filed.

3. Learned counsel for the petitioner would submit that since the petitioner is the purchaser of the suit property in both the suits, final decree proceedings in O.S.No.663/2006 ought to have been tried along with O.S.No.5/2017 which would avoid conflicting judgments and multiplicity of proceedings. He would further state that the petitioner's vendors namely, A.Vasantharaja and his heirs were not added as parties in O.S.No.663/2006 and after selling the suit property to A.Vasantharaja, his vendor namely, J.B.Anandhajothe/2nd defendant in O.S.No.663/2006, cannot represent A.Vasantharaja and since the purchase of suit property by A.Vasantharaja was earlier to the filing of O.S.No.303/1999 (renumbered as O.S.No.663/2006), the sale deed by A.Vasantharaja and his heirs in favour of the plaintiff in respect of the suit property, is not at all hit by the doctrine of *lis pendens*. Thus,



he would state that the petitioner being a proper and necessary party, a joint trial of the partition suit and the declaration suit filed by the petitioner, is necessary and would pray for allowing this petition.

4. *Per contra*, learned counsel for the respondents 1 to 9 would state that final decree petition in I.A.No.610 of 2008 in O.S.No.663/2006 has been pending since 2008 and after the passing of the preliminary decree in the partition suit, the petitioner has purchased the suit property on 17.06.2015 pending *lis* and invited the litigation and therefore, as per Section 52(4) of the Transfer of Property Act, the petitioner is bound by the decree and judgment in I.A.No.610 of 2008 in O.S.No.663/2006. He would further state that the suit filed by the petitioner in O.S.No.5.2017 is at the initial stage, whereas, the suit filed by the respondents in O.S.No.303/1999 (renumbered as O.S.No.663/2006) is at the final stage and for division of suit property, an advocate commissioner has also been appointed and therefore, transfer of the partition suit at this juncture is not at all warranted. The Court below has rightly considered the same and dismissed the transfer petition which does not require any interference by this Court. Hence, they pray for dismissal of this petition.

5. Heard both sides and perused the records.

6. It is not disputed that the petitioner has purchased the property in question only on 17.06.2015. It is also not in dispute that he purchased the said property during the pendency of the suit, that too, after passing the preliminary decree and while petition in I.A.No.610/2008 in O.S.No.663 of 2006 for final decree has been pending before the Principal District Munsif Court, Madurai Town. Knowing fully well that the litigation revolves around the property, he managed to get the property. Therefore, the court below has rightly observed the fact that the action of the petitioner is hit by doctrine of *lis pendens*. It is also seen from the records that the respondents have been prosecuting the matter for a quite long time and the matter is going to attain finality in due course of time. In such circumstances, the attempt of the petitioner is nothing but just to drag on the proceedings endlessly without any cause, transfer petition and original suit has been filed against the respondents. The Court below has also taken aid of Section 52 (4) of the Transfer of Property Act for coming to the conclusion that the petitioner herein is bound by the decree and judgment passed in I.A.No.610 of 2008 in O.S.No.663 of 2006, in which, no infirmity or illegality could be found by this Court. To sum up, the facts and circumstances of the case would clearly indicate that the attitude of the petitioner is to nullify the ordeal proceedings undergone by the respondents so far by just filing O.S.No.5 of 2017 before I Addl.District Court, Madurai and consequently, transfer petition in O.P.No. 26 of 2017 and to derail the scope of the suit



initiated by the respondents which cannot be allowed by this Court. In the case on hand, the Court below has also appointed advocate commissioner for division of the suit property in question by metes and bounds.

7. For the foregoing reasons, this Court holds that the order of the Court below does not require interference and this petition is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed and the order of the Court below is confirmed in its entirety. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

The Principal District Judge,
Madurai.

+1 CC to Mr.T.R.SUBRAMANIAN, Advocate (SR-98100[F]dated 14/11/2019)

+1 CC to Mr.K. MUTHUMALAI, Advocate (SR-98304[F] dated 14/11/2019)

order made in
C.R.P (PD) (MD) No.794 of 2019
14.11.2019

VB(02.12.2019) 4P 4C