

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.1691 of 2018

and

C.M.P.No.9315 of 2018

1. M.Arumugam
2. A.Shanthamani ... Petitioners/Proposed Parties

Vs.

1. Nagasundari
2. S.Selvakumar
3. S.Tamilselvi ... Respondents 1 to 3/Plaintiffs
4. Ponnusamy
5. R.K.Shanmugasundaram
6. R.K.Palanisamy ... Respondents 4 to 6/Defendants 1 to 3

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.04.2018 made in I.A.No.873 of 2017 in O.S.No.70 of 2010 on the file of the Sub Court, Perundurai.

For Petitioners : Mr.N.Manokaran

For R1 to R3 : No Appearance

For R4 : M/s.R.Shase

R5 & R6 - Unserved

ORDER

The proposed parties have come up with this revision challenging the order of the Trial Court rejecting their application in I.A.No.873 of 2017 for impleading them in the suit in O.S.No.70 of 2010 which is one for partition and for separate possession of the suit properties.

2. The Impleading application was filed on 25.10.2017 claiming that the defendants in the suit had sold the property to the petitioners herein on 17.10.2017, hence, the petitioners

sought impleading in the suit. It was also claimed that they are bonafide purchasers for value without notice of the pendency of the suit.

3. This application was resisted by the plaintiffs contending that the petitioners are not a bonafide purchasers, hence they are not entitled to be impleaded in the suit. The Learned Trial Judge accepted the defence and dismissed the application.

4. I have heard Mr.N.Manokaran, learned counsel appearing for the petitioners and M/s.R.Shase, learned counsel appearing for R4. The other respondents, namely R1 to R3 though served, are not appearing either in person or through counsel duly instructed.

5. Though notice is not served on R5 and R6, since they are the vendors of the petitioners herein, notice to them is deemed unnecessary in this Civil Revision Petition.

6. Mr.N.Manokaran, learned counsel for the petitioners, would contend that even though they are pendente lite purchasers, being bonafide purchasers for value, they would have certain rights of partition and they can always claim and seek allotment of property purchased by them to the share of their vendor/s. This valuable right available to them would be defeated if they are not made parties to the suit. Mr.N.Manokaran, would also draw my attention in the Judgment of the Hon'ble Supreme Court in Savitri Devi Vs. District Judge, Gorakhpur and Others, reported in (1999) 2 SCC 577, wherein, the Hon'ble Supreme Court held that subsequent purchasers would also be entitled to come on record. It was also held that question whether the subsequent purchaser is the bonafide purchaser could be decided only in the presence of the parties. On the above conclusion, the Hon'ble Supreme Court held that subsequent purchaser is entitled to brought on record to avoid multiplicity of proceedings.

7. Mr.N.Manokaran, learned counsel for the petitioners, would also rely upon the judgment of the Hon'ble Supreme Court in Thomson Press (India) Ltd. vs. Nanak Builders and Investors Pvt. Ltd. and others, reported in 2013 5 SCC 397, wherein, similar view was expressed by the Hon'ble Supreme Court .

8. Though M/s.R.Shase, learned counsel for R4, would contend that the petitioners are not the bonafide purchasers, since the petitioners have come to Court within 2 weeks of their purchase seeking for impleadment, it should be presumed that they were aware of the pending litigation. The observations of the Hon'ble Supreme Court militate against the contentions of the learned counsel for the respondents. The presence of the petitioners is necessary at least to decide whether they are the bonafide purchasers or not. Hence, I am of the opinion that the Trial Court is not right in dismissing the application for impleadment.

9. Therefore, this Civil Revision stands allowed, the order of the Trial Court in I.A.No.873 of 2017 is set aside and the same is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. Considering the fact that the suit is of the year 2010, the plaintiffs are directed to file the amendment plaint within 30 days from today. The petitioners, who are newly added, to file their written statement within 30 days thereafter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
The Subordinate Court, Perundurai.

+1cc to Mr.M.Guruprasad, Advocate Sr.36815

+1cc to Mr.N.Manokaran, Advocate Sr.36533

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srg 03/12/2020