

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(NPD)No.1150 of 2018 &
C.M.P.No.5963 of 2018

Malathi

Petitioner

Vs.

- 1.Rajakumari
- 2.Chellammal
- 3.Mallika
- 4.Rajesh
- 5.Vanitha
- 6.Lakshmanan
- 7.Rajalakshmi
- 8.Sushila
- 9.Mrs.Vembu
- 10.Valarmathi

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decreetal order made in I.A.No.293 of 2016 in I.A.No.128 of 2010 in O.S.No.65 of 2010, dated 10.10.2017, on the file of the Subordinate Judge Court, At Mannargudi.

For Petitioner : S.S.Thiruvenkataswamy

For Respondents : Mr.G.Vasudevan
For Mr.S.Thirumavalavan
for R-1
No appearance for R2 to R10
.....

ORDER

This Civil Revision Petition arises out of the order passed by the Sub Court, Mannargudi in I.A.No.293 of 2016 in I.A.No.128 of 2010 in O.S.No.65 of 2010.

2. The brief facts necessary for disposal of this Revision are that the petitioner instituted the suit in O.S.No.98 of 2000, seeking partition and separate possession of her 9/32 share in the suit properties. Though on behalf of minor defendants 3 and 4 written statement was filed, the other defendants remained exparte. During trial, no witness was examined on the side of the defendants. A preliminary decree came to be passed on 14.12.2001. Thereafter, I.A.No.128 of 2010 was filed for passing Final Decree.

3. Pending Final Decree proceedings, the first respondent-Rajakumari filed the present Application in I.A.No.293 of 2016 under Order 1 Rule 10 of C.P.C to implead her as 10th defendant in the suit. It is her case that the first defendant-Chellamal became the absolute owner of the first item of the suit schedule property vide registered sale deed dated 28.11.1972, which was purchased out of her sreedhana amount from one

Thiruvengkata Mudaliar. Subsequently, she conveyed the first item of the suit property measuring an extent of 7 acres 36 cents to one Duraisamy under a registered sale deed dated 25.06.2001. The first respondent purchased the property under registered sale deed dated 01.12.2011. Since then she has been in possession of the property.

4. It is the specific case of the petitioner that the suit schedule first item was the self acquired property of the first defendant-Chellammal. Since it was already sold, the property was not liable for partition. It is further stated that she had no knowledge about the suit proceedings and only in the 1st week of February 2016, she came to know the preliminary decree passed in the suit, and filed this petition to implead her as a party to the proceedings.

5. The application was resisted by the petitioner contending that the preliminary decree for partition was already passed in the suit as early as 14.12.2001. Since there was no appeal, the preliminary decree has become final and legally binding upon the parties. In the final decree proceedings, the correctness and validity of the preliminary decree cannot be gone into. The petitioner being the *pendente lite* purchaser is bound by

the Decree and she need not be impleaded as a party to the proceedings. The learned Sub Judge, overruling the objections of the petitioner, allowed the application. Hence, the present Revision.

6. Mr.S.Thiruvengkataswamy, learned counsel appearing for the petitioner would argue that the first respondent herein is the *lis pendens* purchaser and when the first defendant remained *exparte* without whispering anything about the transaction, the present application filed by her purchaser ought to have been rejected by the trial Court holding that she was not a *bona fide* purchaser. It is next contended that the trial Court allowed the application relying upon the decision reported in ***Shakeela Begam Vs. Mohammed Yakkub (deceased) & others*** [2013 (5) LW 58], which is not applicable to the case on hand.

7. *Per contra*, Mr.S.Thirumavalavan, learned counsel appearing for the first respondent would argue that the first respondent is a *bona fide* purchaser of item No.1 of the suit property and she has been in possession and enjoyment of the same since 2011, but she was aware of the suit proceedings only in 2016 and immediately, she filed this application to implead her in the suit. According to the learned counsel, the subsequent

purchaser of the suit property is a necessary and proper party to the suit proceedings. In this regard, he relies on the order passed by the Hon'ble Apex Court in 2007 (10) SCC 719 [*Dhanalakshmi and others Vs. P.Mohan and Others*].

8. Heard the learned counsel for the parties and perused the materials available on record.

9. In the instant case, it is an admitted fact that the petitioner has filed the suit for partition and a preliminary decree was passed on 14.12.2001. According to the plaintiff, the suit schedule properties were originally owned by his father Kusalava Kandiyar, S/o.Ramasamy Kandiyar and they are ancestral properties. The said Kusalava Kandiyar died 16 years ago and thereafter, the properties were maintained by his elder son R.K.Rajendran. The said Kusalava Kandiyar had two sons and 5 daughters. The first defendant is his wife, so she is entitled for 9/32 share in the suit schedule property.

WEB COPY

10. The case of the first respondent is that the first defendant Chellammal was the absolute owner of the suit schedule property by virtue of the sale deed dated 28.11.1972 and it was sold to one Duraisamy on

25.06.2001 and he conveyed the property to the first respondent under sale deed dated 01.12.2011.

11. The only question that arises for consideration in this case as to whether the first respondent is entitled to be impleaded as a party to the proceedings.

11. In **2013 (5) LW 58**, a Single Judge of this Court, while deciding the Appeal Suit preferred challenging the preliminary decree passed in a partition suit had an occasion to consider whether the subsequent purchaser is a necessary party to the suit proceedings. In that case, the sharer, who sold the property to the third party did not give any particulars about the sale in the written statement. The purchasers were not impleaded as defendants in the suit. In the above fact, this Court held that the subsequent purchasers may not be considered as necessary parties and they can only be considered as proper parties. The *pendente lite* purchasers are entitled to get themselves impleaded in a final decree application to work out their equity, while allotment of property. The relevant paragraph is extracted hereunder:-

"29. Therefore, I am of the opinion that the Trial Court ought not to have dismissed the suit for non-joinder of subsequent purchasers, in the absence of any details given by the respondents/defendants, and subsequent purchasers may be proper parties and their presence is required only at the time of final decree proceedings and those persons can also be impleaded at the stage of the final decree to work out their remedies. Therefore, the point for consideration is answered in favour of the appellant/plaintiff, and, I hold that in a suit for partition, in the absence of any particulars provided by the defendants regarding the subsequent transferees, the suit cannot be dismissed on that ground and subsequent purchasers can be added in the final decree proceeding, as they will have to work out their rights with respect to the shares allotted to their vendors."

12. The trial Court following the observations made in the above Judgment has allowed the application. The learned counsel appearing for the petitioner has stated that the ratio laid down in that case will have no application to the case on hand. I am unable to agree with the submission of the learned counsel for the petitioner for the reason that in the Judgment, this Court after considering a number of judgments of Hon'ble Apex Court has held that the *pendente lite transferees* can be impleaded in the final decree proceedings.

13. In **2007 10 SCC 719** (*supra*), the Apex Court has held that the

subsequent purchasers are necessary and proper parties to the suit proceedings. The relevant paragraph would run thus:-

"5. ... Admittedly, the appellants, having purchased the property form the other co-shares, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trial Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings.

14. In the light of the above, I find no merit in the Civil Revision Petition and hence, the Civil Revision Petition is liable to be dismissed, and accordingly, it is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

13.08.2021

Index : Yes / No

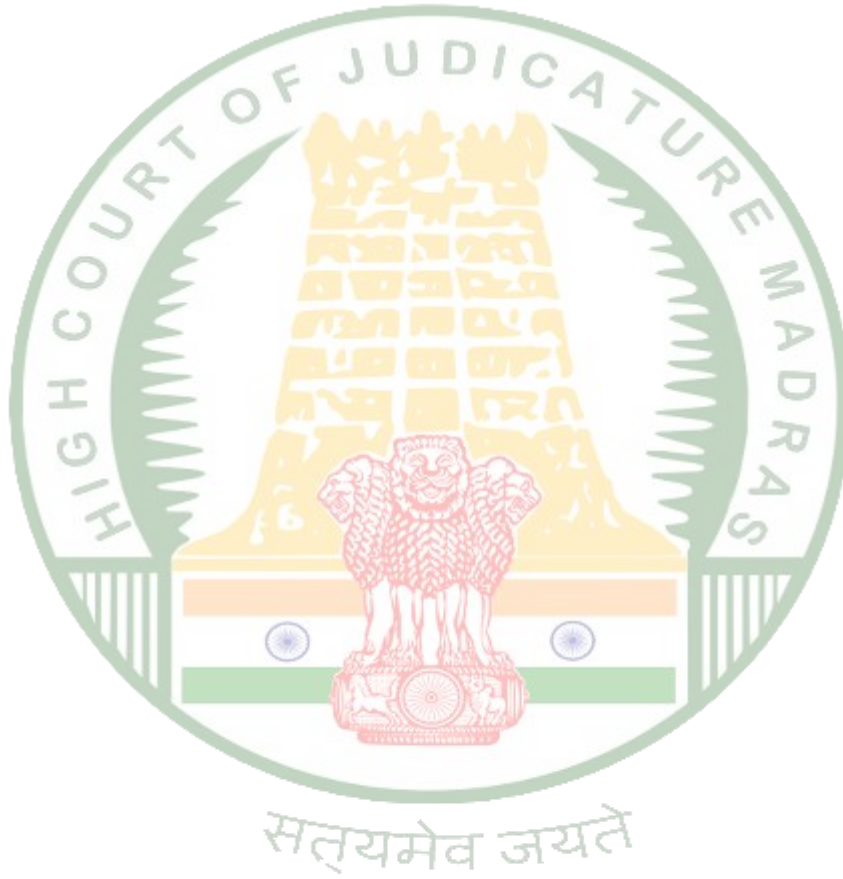
Internet : Yes

Speaking order / Non Speaking Order

r n s

To

The Subordinate Judge Court,
Mannargudi.

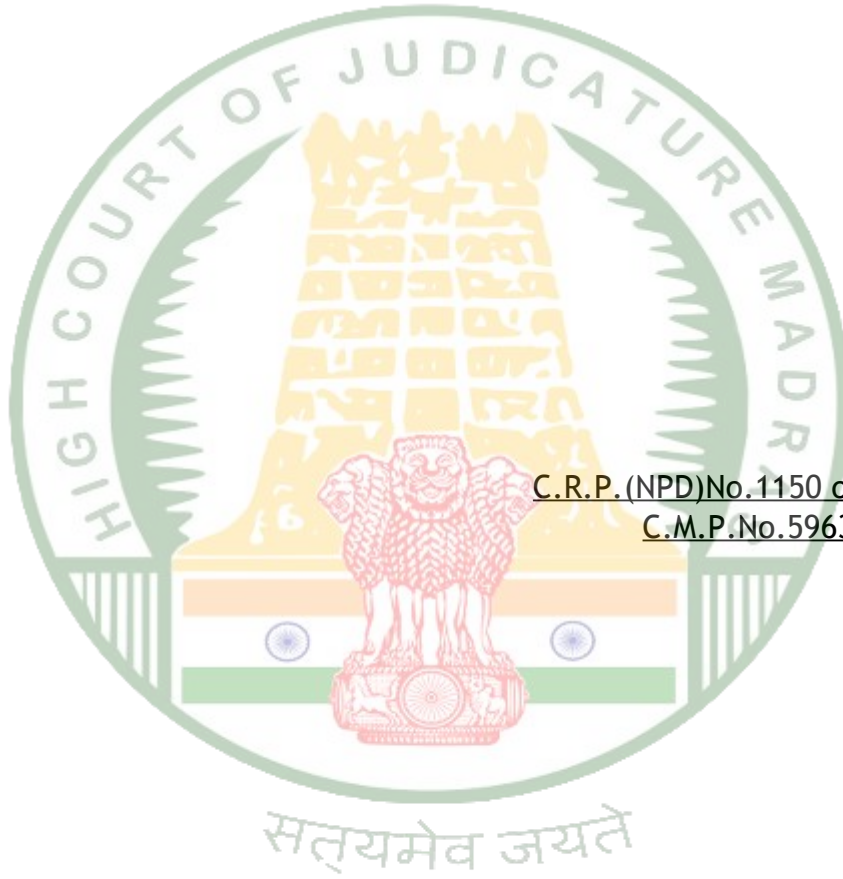


WEB COPY

C.R.P.(NPD)No.1150 of 2018

K.KALYANASUNDARAM, J.

r n s



C.R.P.(NPD)No.1150 of 2018 &
C.M.P.No.5963 of 2018

WEB COPY

13.08.2021