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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.08.2021

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

CRP.NO.3038 OF 2018

and

CMP.No.17645 OF 2018

S.Parthasarathy

... Petitioner

Vs

1.S.Srinivasan
2.S.Durai @ Govindasamy
S.Ramachandran (deceased)
3.Vijyayalakshmi
4.Devan
5.Kumar
6.Parasparasahayanidhi
Rep by its Executive Director

7.Barnabass
8.Vinod Patel
9.Dinesh Patel,
10.Thara

.. Respondents

Prayer:

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 13.08.2018 in I.A.No. 89 of 2017 in O.S.No.7132 of 2014 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.D.Aravindan

For Respondent No : Mr.S.Nagarajan - R1

: Mrs.Chithra Gomathy - R8 to R9

O R D E R

This Civil Revision Petition is directed against the order dated 13.08.2018 in I.A.No. 89 of 2017 in O.S.No.7132 of 2014 passed by the XVII Additional Judge, City Civil Court, Chennai.



2. Brief facts of the case are that the 1st respondent herein as Plaintiff instituted the suit O.S. No. 7132 of 2014 against the petitioner as well as respondents 2 to 6 herein, seeking partition and separate possession of the suit properties. In the said suit, the 1st defendant had filed an application in I.A.No. 89 of 2017 to implead the respondents 7 to 10 as defendants 8 to 11 in the suit. The said application came to be dismissed. Challenging the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that the suit scheduled items III & IV were sold to the proposed defendants/respondent 7 to 10 herein as early in the year 2002 itself. The 1st defendant's signature has been forged and in this regard, a criminal case has also lodged before the City Crime Branch, Chennai. A case in Crime No. 466 of 2003 was registered, and the case is taken on file in C.C.No. 1937 of 2007. As the plaintiff has filed proof affidavit stating that he is relinquishing his right in suit schedule items III & IV, the impleading petition was dismissed. It is also contended by the learned counsel for the petitioner that the trial Court has not considered one important factor that in a suit for partition even the defendant is to be treated as plaintiff and hence the order passed by the trial Court is liable to be set aside.

4. Per contra, the learned counsel appearing for the 1st respondent/plaintiff would submit that even though the 1st respondent/plaintiff, originally opposed the application to bring the proposed respondents before the trial Court, subsequently the plaintiff himself filed an application to bring the purchasers as defendants in the suit. According to the learned counsel, the plaintiff claims share in the schedule items III & IV, which was sold to the proposed respondents, hence the order impugned in the revision has to be set aside.

5. The learned counsel appearing for the proposed defendants would argue that the plaintiff as well as defendants have sold the property in the year 2002, thereafter, mutation in the revenue records has already taken place and without seeking for setting aside the sale deed, the proposed respondents cannot be impleaded. That apart the suit is barred by limitation.

6. Heard the rival submissions made by the learned counsels appearing for the parties concerned and perused the records.

7. In the present case, it is not disputed that the suit for partition has been filed by the 1st respondent against the petitioner and the respondents 2 to 6 herein. It is also not disputed that the suit schedule items III & IV were sold to the proposed respondents in the year 2002. It is pertinent to note



that in the interim application, the rights of the parties cannot be determined and they should be given opportunity to let in evidence and on appreciation of evidence, the rights of the parties can be decided.

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8. In Dhanalakshmi and Others Vs P.Mohan and Others reported in (2007) 10 SCC 719, the Hon'ble Apex Court has held that the subsequent purchasers are proper and necessary parties to the suit.

9. In the present case, the 1st defendant had filed the application to implead the purchasers as defendants in the suit. It appears that the plaintiff/1st respondent herein, who originally objected the impleading petition has now conceded that they are necessary parties. In the light of the decision of the Hon'ble Apex Court referred above, the impugned order is liable to be set aside.

10. In such view of the matter, the order passed by the trial Court in I.A.No.89 of 2017 in O.S.No.7132 of 2014 is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Additional Judge,
City Civil Court, Chennai.

Copy To

1. The Registrar,
City Civil Court, Chennai-104.
2. The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mrs.Chithira Gomathy, Advocate, S.R.No.38657

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BR(CO)
CS/04/10/2021