



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.03.2022
Pronounced on	11.04.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) Nos.2328 & 2329 of 2016

1. A.Maheswari ... Petitioner in C.R.P(PD)No.2328 of 2016
2. M.Kannan ... Petitioner in C.R.P(PD)No.2329 of 2016

Vs.

1. Poongodi @ Punitha
2. Minor Sukindra
Rep. by her next friend
guardian mother 1st plaintiff Poongodi @ Punitha
Periya Gounder @ K.C.Periyasamy (Died)
P.Jayalakshmi (Died)
Alagumani Anandan (Died)
3. Erstwhile Minor Ragavi,
Now attained majority
4. Minor Ranjith,
Rep. by its next friend Guardian/Sister Ragavi
5. M/s.Ponni Sugar Ltd.,
A public limited company registered under
Indian Companies Act.
6. Kannamal @ Ranganayaki ... Respondents in both C.R.Ps
*(Notice may be dispensed with to R5 & R6
since R5 set exparte in suit itself and
R6 set exparte in I.A.No.705 of 2014 on 30.11.2015)*



These Civil Revision Petitions filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 23.03.2016 made in I.A.Nos.704 & 705 of 2014 in O.S.No.236 of 2008 on the file of the Subordinate Judge, Tiruchengode.

For Petitioner : Mr.S.Viswanathan
for both C.R.Ps

For Respondents 1 & 2 : Mr.P.Valliappan
for both C.R.Ps

For Respondent 3 : Mr.M.V.Venkataseshan

For Respondents 5 & 6 : Exparte

COMMON ORDER

These Civil Revision Petitions have been filed, challenging the fair and decreetal order passed by the learned Subordinate Judge, Tiruchengode in I.A.Nos.704 & 705 of 2014 in O.S.No.236 of 2008 dated 23.03.2016, dismissing the impleading petition filed by the revision petitioners.

2. The learned counsel for the petitioners submitted that initially, the suit was filed as O.S.No.3 of 2005 for partition before the Sub Court, Namakkal and later transferred to Sub-Court, Tiruchengode and re-numbered



as O.S.No.236 of 2008. The 1 & 2 respondent/plaintiffs viz., Poongodi @ Punitha and minor Sukindra (represented by her mother) have filed the suit in O.S.No.236 of 2008 before the Subordinate Court, Tiruchengode for the following relief:

a) a preliminary decree for partition of suit properties into 36 equal shares with respect to good and bad soil with cart track, pathway and channel facility and allot #16 such shares to the plaintiffs and fixing a time for an amicable partition between the parties with in the time stipulated by this Honourable Court and in case of failure of the same between the parties making provision for the parties to apply for a final decree to divide the suit properties by appointing a Commissioner of this Honourable Court measure the suit property divide the suit properties into 36 equal shares with respect to good and bad soil cart track pathway and channel facility and also suggesting better modes of division for convenient enjoyment for allotment to respective parties by filing report with plan drawn to scales,

b) direct the defendants to put the plaintiffs in separate possession of such share allotted to the plaintiffs in the suit property in the final decree;

c) a decree for permanent injunction restraining the defendants, their men, servants and agents from in any way alienating the plaintiffs 10/36th



share in the suit properties and there by interfering with the plaintiffs joint peaceful possession and enjoyment of their share in the suit properties till final decree proceedings are over and parties take separate possession of their respective shares.

2.1. The first defendant viz., K.C.Periyasami has filed the written statement in O.S.No.236 of 2008 on 29.08.2005 stating that the first defendant is aged about 80 years and after the death of his sons there was a scramble in between the plaintiffs and the other defendants to grab the suit property. Subsequently, a sale deed Document Nos.1861 & 1862 of 2010 was executed by Minor Ranjith Anandan (represented by his mother Alagumani Anandan) in favour of the revision petitioners viz., Mrs.A.Maheswari and Mr.M.Kannan and the same was registered on 09.06.2010, before the Sub Registrar, Pallipalayam.

2.2. Further, the revision petitioners filed an Interlocutory Application in I.A.Nos.704 & 705 of 2014 under Order I Rule 10(2) and Section 151 of C.P.C, seeking to implead them as eighth and ninth defendants in the suit in O.S.No.236 of 2008 for the reason that during the pendency of the above suit, the revision petitioners have bonfidelly purchased the 5th item of the suit



properties i.e. a dry land in Old Survey No.117/1, New Survey No.117/8 with extent of Punjai Hectare 0.21.0 in which 0.0019.51 & 0.0121.52 sq.mt of Kokkarayanpettai Village, from the defendants 5 & 6 by way of sale deed dated 09.06.2010.

2.3. In the schedule of the property, the above mentioned property is mentioned as item 5 and if any order is passed against, then their interest in the suit properties will be defeated. Since, the revision petitioners are the bonafide purchasers of 5th item of the suit properties, they have to be impleaded in the above suit as one of the defendants to protect the right and title of the suit properties and in order to avoid multiplicity of proceedings, the suit has to be adjudicated completely and effectively.

3. The learned counsel for the petitioners further submitted that the settlement deed Document No.787 of 2005 dated 11.05.2005 clearly shows that the 5th item of the suit properties was the one, purchased by the revision petitioners and the person viz., Alagumani Anandan, who on behalf of her minor son Ranjith Anandan, executed the sale deed in favour of the revision



petitioners and later she was murdered in the same year, when the sale deed was executed.

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4. The learned counsel for the petitioner relied on the order passed by this Court in the case of Nachammal Vs. Lavangammal, reported in 2006 (3) CTC 543. For better appreciation the relevant portion paragraphs of the order is extracted hereunder:

“1. The order rejecting the Application filed under Order 1, Rule 10(2), C.P.C., to implead the petitioner/third party as a party in the preliminary decree proceedings is challenged in this Revision Petition.

5. The object of Order 1, Rule 10, C.P.C. Is to discourage contests on technical pleas and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under the above Rule, a person may be added as a party to a suit only in the following two cases:

(1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or

(2) When, without his presence, the questions in



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the suit cannot be completely decided.

The power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right”.

And further relied on the order of this Court in the case of Dhanalakshmi and others Vs. P.Mohan and others, reported in 2005 (2) CTC 254. For better appreciation, the relevant paragraphs of the order is extracted hereunder:

Doctrine of lis pendens – Purchasers of property pending partition suit sought to implead themselves – their purchase hit by doctrine of lis pendens – cannot claim equity – not entitled to get impleaded in the suit.

6. Section 52 of the Transfer of Property Act prohibits transfer of property which is directly or specifically involved in a suit or proceedings, which is not collusive, in a manner that will affect the rights of any other parties, except under the authority of the Court and on such terms as the Court may impose. The Explanation to this Section provides that pendency of the suit “shall be deemed to commence



from the date of the proceeding of the plaint or the institution of the proceedings in a Court of competent jurisdiction” until the suit or proceedings will dispose of finally be a decree or an order or full satisfaction of discharge of the decree is obtained. In the present case, there is no dispute that the property was purchased, pending the suit, inasmuch as the plaint was presented in the year 1998 itself. Even the respondent does not dispute this.

12. In the present case the purchases by the petitioners are clearly hit by lis pendens. They are not entitled to be impleaded, since any right that they may have cannot be larger than the right of their vendors, assuming that they are bona fide purchasers. The order passed in E.A.No.98 of 2000 is to the effect that brother of one of the petitioners had purchased the very same property by fraud at a Court auction. It is claimed that his order is subject matter of a pending C.R.P. But the fact remains that as on date, the order passed in the E.A. Would indicate that the petitioners cannot even claim any equity. There is no justification to interfere in the order passed by the Court below”.

5. The learned counsel appearing for the respondents 1 & 2 submitted that the above suit in O.S.No.236 of 2008 was filed by the respondents 1 & 2



viz., Poongodi @ Punitha and Minor Ragavi (represented by her mother Poongodi @ Punitha) as early as by the end of 2004 on the file of the Sub Court, Namakkal against her then family members and the same was taken on file as O.S.No.3 of 2005. Further the respondents 1 & 2 have made a publication in Dhinamalar local daily dated 22.01.2005 about the pendency of the suit, which was widely circulated at Kokkarayanpettai. Subsequently, the respondents 4 & 5 were murdered and in fact both the sons of the respondents 3 & 4 were dead and the entire village was well aware of the family and the pendency of the suit. Further, the third respondent, Mr.K.C.Periya Gounder @ K.C.Periyasami joined hands with his henchmen made an attempts to alienate the properties from the other respondents. Hence, the respondents 1 & 2 filed the above suit.

6. The learned counsel for the respondents 1 & 2 further submitted that subsequent to the filing of the suit in the year 2004, a settlement deed dated 11.05.2005 was executed by Mr.K.C.Periya Gounder @ K.C.Periyasami in favour of Minor Ranjith Anandan (represented by his mother Alagumani Anandan) and Minor Sukinthra (represented by her mother Poongodi @ Punitha). Subsequently, a sale deed dated 09.06.2010 was executed in favour of the revision petitioners by Minor Ranjith Anandan (represented by his



guardian mother Alagumani Anandan). Further, the suit was filed for partition and the revision petitioners are not a bonafide purchasers of a part of the suit property without notice and knowledge of the pendency of the suit.

The sale deed is hit under Section 52 of the Transfer of Property Act, 1882 and the revision petitioners are bound by the result of the suit. The revision petitioners are the alleged purchaser of the suit property and they have no right to be heard in the suit. Moreover, the alleged sale deed is not a true and valid one, supported by consideration and the same is fabricated just to defeat the rights of the respondents 1 & 2/ plaintiffs. It is relevant to extract the provision of Section 52 of the Transfer of Property Act, 1882.

“52. Transfer of property pending suit relating thereto.- During the (pendency) in any Court having authority (within the limits of India excluding the State of Jammu and Kashmir) or established beyond such limits) by (the Central Government) of (any) suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of



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the Court and on such terms as it may impose.

(Explanation.-For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force)."

7. The learned counsel for the respondents 1 & 2 further submitted that the allegation made by the revision petitioners that if the vendors disclosed the pendency of the suit, they could have avoided the purchase of the property is not sustainable for the reason that since, the entire village was well aware of the family dispute and the doctrine of lis pendens will apply to this case for the reason that the property was purchased by the revision petitioners in the year 2010, when the suit filed by the respondents 1 & 2 in the year 2004 was pending on the file of the Sub Court, Tiruchengode. The suit was filed for partition and the revision petitioners are the purchasers of the 5th item which is mentioned in the schedule of the suit in O.S.No.236 of



2008 and they are not the necessary parties for the suit, since, in a partition suit, the parties will be only the family members and not others. The revision petitioners/third parties have to wait for the outcome of the suit and to take further course of action in regard to the purchase of the property. The apprehension of the revision petitioners is that if, the family members compromise without giving any share to the deceased defendant Alagumani, then, there is nobody to defend with regard to his right.

8. The learned counsel for the respondents 1 & 2 further submitted that the averments made in the affidavit filed in support of I.A.Nos.704 & 705 of 2014 to implead the revision petitioners as 8th & 9th defendants in the suit does not attract any of the ingredients as contemplated under Order 1 Rule 10(2) of C.P.C. Hence, the same is not maintainable and the trial Court has rightly dismissed the impleading application filed by the revision petitioners. For better appreciation, Order 1 Rule 10(2) of Civil Procedure Code is extracted hereunder:

“10(2) Court may strike out or add parties.-
The Court may at any stage of the proceedings, either upon or without the application of either party, and on, such terms as may appear to the Court to be just,



order that the name of any party improperly joined, whether as plaintiff or defendant, be stuck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

9. Heard Mr.S.Viswanathan, learned counsel for the petitioners and Mr.P.Valliappan, appearing for the learned counsel for the respondents 1 & 2 and perused the material documents available on record.

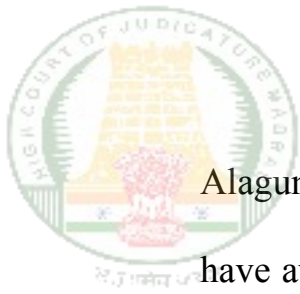
10. It can be seen on careful perusal of the material documents available on record that the suit has been filed in the year 2004 and subsequently, the settlement deed dated 11.05.2005 with document No.787 of 2005 was executed by Mr.K.C.Periyasami, first defendant in the suit in favour of the vendors. Further, the sale deed Document Nos.1861 & 1862 of 2010 was executed in favour of the revision petitioners viz., A.Maheswari and M.Kannan by the vendor viz., Minor Ranjith Anandan (represented by his mother and guardian Alagumani Anandan) on 09.06.2010 and the same is



also not valid, since, the suit for partition is pending. The settlement deed document No.787 of 2005 and the sale deed document Nos.1861 & 1862 of 2010 are not valid in law, since, the settler in the settlement deed namely Mr.K.C.Periya Gounder @ K.C.Periyasamy and the vendor in the sale deed viz., Minor Ranjith Anandan (represented by his guardian mother Alagumani Anandan) did not obtain the permission from the Court before executing the same. Whereas, in the description of properties as well as in the settlement deed dated 11.05.2005, the properties purchased by the revision petitioners are mentioned as item 5.

11. Hence, the doctrine of lis pendens will apply to this case and the sale transaction is subject to the out come of the partition suit. Subsequently, the revision petitioners filed an Interlocutory Application in I.A.Nos.704 & 705 of 2014 to implead the revision petitioners as defendants 8 & 9 in the suit.

12. The main contention raised by the revision petitioners is that they were not aware of the pendency of the suit, filed for partition in the year 2004 and if, the vendors viz., Ranjith Anandan (represented by his guardian mother



Alagumani Anandan) have disclosed the pendency of the suit, they would have avoided the purchase of 5th item of the property. Moreover, While, the suit was pending, the third defendant Alagumani Anandan also died.

13. The suit was filed for partition and separate possession. The revision petitioners purchased the 5th item of properties from the vendors who are the 5th & 6th defendants. In the suit for partition, the defendants 5 & 6 are having shares in the suit properties, and their shares alone they are entitled to sell to other parties which will be decided at the time of the trial in the main suit. In a partition suit, first, the preliminary decree will be passed for determining the shares and then, in the final decree, the respective shares will be allotted to the parties in the suit. It is an admitted fact that the revision petitioners/third parties are the subsequent purchaser of the 5th item of the suit property and the property was purchased during the pendency of the suit (Doctrine of lis pendens) and the trial Court has rightly dismissed the application filed by the revision petitioners to implead them as defendants 8 & 9 in the suit holding that the revision petitioners/third parties are not a necessary parties in the main suit.

14. In view of the above facts and circumstances, foregoing reasons



and the ratio laid down by this Court, I do not find any infirmity in the order passed in I.A.Nos.704 & 705 of 2014 in O.S.No.236 of 2008 dated 23.03.2016 by the learned Subordinate Judge, Tiruchengode and the same is hereby confirmed. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, connected C.M.P.No.12020 is closed.

11.04.2022

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Index : Yes/No

Speaking Order/Non-Speaking Order

To:
The Subordinate Court,
Tiruchengode.



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J.SATHYA NARAYANA PRASAD,J.

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Pre Delivery Common Order in
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