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C.R.P.No.1535 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.09.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1535 of 2016

Kalavathy

...Revision Petitioner/Petitioner/3rd Respondent/3rd Party.

Vs

Tamilarasi

...Respondent/Respondent/F.D.Petitioner/Plaintiff.

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the order dated 22.04.2016 passed in I.A.No.164/2016 in I.A.No.234 of 2015 in O.S.No.614/1992 on the file of the First Additional District Munsif Court at Bhavani and pleased to direct the Trial Court to receive the documents in the above said proceedings again for fresh consideration of final decree application on merits and to dispose of the same.

For Petitioner : Mr.M.Naraayanaswamy

For Respondent : Mr.P.Valliappan

: Senior Counsel

(Sole Respondent): for Mr.T.Dheeraj

ORDER

O.S.No.614 of 1992 was filed for partition. It was filed by the daughter-in-law of the defendants. She claimed the right by virtue of the fact that her husband Easwaran has passed away. The defendants in the



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suit are Nallammal and Perumal Gounder, the father of the deceased Eshwaran.

2.This suit ended in a preliminary decree on 17.04.1997. To convert the preliminary decree into a final decree, the plaintiff took out I.A.No.234 of 2015. In the said final decree proceeding, an application was taken out to implead the civil revision petitioner as a party defendant. The ground on which the plaintiff wanted to implead the civil revision petitioner was that, she had purchased the shares of the defendants Nallammal and Perumal Gounder.

3.After having been impleaded as a party to the final decree, the civil revision petitioner filed I.A.No.164 of 2016 under Order 8 Rule (1A) (3) of CPC for the purpose of receiving certain documents. The purpose for which these documents were sought to be filed was to attack the very preliminary decree itself in the final decree proceedings. The said application was dismissed by the Learned District Munsif at Bhavani against which the present civil revision petition.

4.Heard Mr.M.Naraayanaswamy learned Counsel for the petitioner and Mr.P.Valliappan learned Senior Counsel for Mr.T.Dheeraj, the learned counsel for the respondent.

5.The aforesaid facts would go to show that the preliminary decree passed on 17.04.1997 has become final. It is not open to a party, who is a purchaser from the defendants, in a suit for partition *pendente-lite* to challenge the preliminary decree and that too in the final decree



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proceeding. Such a course is not permissible. Nonetheless, a party to a proceeding is entitled to file documents to substantiate her case.

6.Therefore, while setting aside the order in I.A.No.164 of 2016 in I.A.No.234 of 2015 in O.S.No.614 of 1992, the documents filed by the petitioner shall be received subject to relevancy & proof. It is made clear that the third party purchaser will not be entitled to challenge the validity or otherwise the preliminary decree in the final decree proceedings.

7.With the above observation, this civil revision petition stands allowed. The suit being of the year 1992 and the final decree being of the year 2014, the learned First Additional District Munsif Judge, Bhavani is requested to dispose of the final decree proceedings on or before 31.03.2024 and submit a report to this court. No costs.

15.09.2023

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citations : Yes/No



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V. LAKSHMINARAYANAN.J,

nst

To:
The
First Additional District Munsif Judge,
Bhavani.

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