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CRP.No.2087 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2087 of 2019

R.Shek Dawood

... Petitioner

Vs

M.Neil Selvakumar

... Respondent

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.10.2018 made in I.A.No.850 of 2017 in O.S.No.786 of 2009 on the file of the II Additional District and Sessions Court, Thiruppur.

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.G.Dakshinamurthy

ORDER

This Civil Revision Petition arises at the instance of the 7th defendant. The suit is one for partition as against the defendants 1 and 2. In the said proceedings, the tenants namely the defendants 7 to 12 have been impleaded as parties for a direction to deposit the rents into the Court. In a suit for partition, a stranger to the family has no role at the time of preliminary decree. His role arises only at the time of final decree. At that stage, he can ask for the property which falls to his vendor can be allotted to



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him, if equity so permits. In this case, the 7th defendant claims to have purchased a share of the 1st defendant. The suit is of the year 2009 and unfortunately, its still languishing on the stage of preliminary decree.

2. In the said suit, an application was taken out by the 7th defendant to set aside the ex-parte order passed against him in the preliminary decree stage. The learned trial Judge had dismissed the application on 09.10.2018 holding that no reason has been given for setting aside the order dated 18.01.2010.

3. Heard Mr.K.Sudhakar, learned counsel appearing for the petitioner as well as Mr.G.Dakshinamurthy, learned counsel appearing for the respondent and gone through the record.

4. It is not in dispute that the 7th defendant is a tenant. The learned counsel for the petitioner would submit that pending the suit, the 7th defendant has purchased the share of the 1st defendant and therefore, he has right in and over the property. A *lis pendens* purchaser as pointed out above can claim a right at the time of final decree alone and that right too for allotting the property purchased by him from his vendor. This is not an absolute right but it is subject to the equity to be worked out at the time of final decree. If his vendor has sold more than his entitlements then the question of



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allotting the property in his favour might not arise. Be that as it may, I have gone through the order and there is absolutely no explanation from 2010 to 2017 as to why the petitioner did not move an application under Order 9 Rule 7 of C.P.C. Therefore, the order of the trial Court in I.A.No.850 of 2017 in O.S.No.786 of 2009 dated 09.10.2018 stands confirmed. Accordingly, this Civil Revision Petition is dismissed. No costs.

5. Liberty is granted to the petitioner to workout his right at the time of final decree, if he is able to prove that the 1st defendant has sold the property to him. The learned II Additional District and Sessions Judge, Thiruppur, is requested to give priority to the suit and dispose of the same as early as possible preferably within a period of four months from the date of receipt of a copy of this order.

12.09.2023

Index:Yes/No
Speaking order/Non-speaking order
vkr

To

1. The II Additional District and Sessions Judge, Thirupur.



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V.LAKSHMINARAYANAN,J.

Vkr

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