



C.R.P.No.2371 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2371 of 2021
and
C.M.P.No.18034 of 2021

1.R.Viswanthan
2.Dr.Juliet Jayasree Rani

.. Petitioners

VS

1.Usharani
2.K.Rajamohan
3.K.Sitara
4.Manimegalai
5.S.Raja
6.S.Rajesh
7.Kanagavalli
8.U.Rajkumar
9.U.Muthukumar
10.U.Shakthivel
11.R.Padmanaban
12.R.Gurunathan
13.Gnanaraj
14.Radha
15.Balraj
16.Sarath Mohan
17.Dr.S.R.Subramaniam
18.Sivagami
19.Padma
20.Gnanajothi
21.Prema Kulothungan
22.Leela
23.J.Jayakanth
24.M.Jambunathan
25.Dhanalakshmi
26.P.K.Pushparaj
27.A.K.Usha



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28.H.Babu @ Hamsaveni

29.R.Rajeswari

30.Rajasekar

31.Latha Rukmani

32.R.Sundararaj

33.B.K.Mishra

34.Sivaraj Saxena

35.K.Sureshkumar

36.Ragini Devi

37.Kannan

38.Padmanaban

39.Seshadri

40.M/s.Southern Shelters/Archana's Softwares
rep. By its Managing Director,
No.9/B, Bishop Wallace Avenue,
Mylapore, Chennai – 4.

41.M/s.Snow Housing Ltd., rep. By its
Managing Director,
No.18 (Old No.11), 4th Street,
Thirumoorthi Nagar, Nungambakkam,
Chennai – 34.

42.Hemamani

43.Sasi Rekha

44.Manikanda Prabhu

45.V.Christopher

.. Respondents

Petition filed under Article 227 of The Constitution of India
against the judgment and decree passed in I.A. No.05 of 2019 in
O.S. No.247 of 1996 in A.S. No.33 of 2013 dated 23.02.2021 on
the file of the Principal District Judge, Tiruvallur.

For Petitioner : Mr.D.Krishna Pradeep

For Respondents : R1 – Sd
R2 – R45 NDW
Mr.SPG.Yoganand
for M/s.SPG Yoganand Assts



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ORDER

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The petitioner before me is the plaintiff in O.S.No.247 of 1996. The said suit is for partition and separate possession. The suit was decreed. Aggrieved by the said decree, regular appeal was preferred in A.S.No.50 of 2009 before the District Court at Tiruvallur. The first appeal was also dismissed. Challenging the preliminary decree, a second appeal was preferred before this Court in S.A.No.161 of 2011. That second appeal also ended in dismissal confirming the preliminary decree granted in favour of the plaintiff.

2. This commences the second round of litigation. The plaintiff filed I.A.No. 289 of 2009 for the purpose of passing of final decree. This application was allowed on 30.04.2012. Challenging the same, four appeals were preferred in A.S.Nos. 33 & 38 of 2012 and 32 and 33 of 2013. The appeals were dismissed on 31.10.2013. Challenging the four appeals, second appeals were preferred before this Court. S.A.No.943 of 2014 challenged A.S.No.38 of 2012. This appeal was dismissed on 19.11.2014. S.A.No.663 of 2014 challenged A.S.No.33 of 2013. S.A.No.576 of 2017 was filed challenging the order in A.S.No.32 of 2013. That



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appeal was dismissed on 07.11.2017. While things had reached finality in part, the second appeal preferred against A.S.No.33 of 2013 in S.A.No.663 of 2014 came to be accepted by this Court and the appeal was allowed and remanded to the first appellate Court on 27.03.2015.

3. It is pertinent to point out though the appellants are different, the decree that was sought to be get rid off was the final decree that was passed in I.A.No.289 of 2009 on the file of the learned Subordinate Judge, Poonamallee dated 30.04.2012.

4. Seeing the incongruent nature of the decree passed, the matter was taken for Special Leave Petition in S.L.P.(C) No. 9821 of 2018. The Supreme Court, granted liberty to the petitioner to move the High Court by way of a Review Petition. Accordingly, Review Petition was filed in RA No.165 of 2018. In R.A.No.165 of 2018, this Court directed the Principal District Judge to number the impleading applications filed by the *lis pendens* purchaser and to consider the same on merits. The applications were considered on merits and it was allowed by the Court on 23.02.2020. Challenging the same, the present civil revision petition is presented.



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5. Heard learned counsel on either side and perused the materials on records.

6. The narration of the facts set forth above will make it clear that there is one suit for partition and several appeals which had been preferred from the decree. The respondents before me are the *lis pendens* purchasers whose vendor's vendor's vendor was a sharer in the suit properties. He was made as party but none of the subsequent purchasers were made as party to the proceedings. If not for the order in S.A.No.663 of 2014, I would not have had that problem in setting aside the order passed in implead petition and dismissing the applications. However, this Court by a judgment and decree in SA No.663 of 2014 dated 27.03.2015 had allowed the appeals and remanded the final decree application for fresh disposal before the lower appellate Court. That having been done, effect of the decree is the final decree that had been confirmed by the lower appellate Court had been set aside and the entire matter was at large before the lower appellate Court all over again.

7. There cannot be more than one final decree in a



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partition suit whereas several preliminary decrees can be passed.

If I were to state that by virtue of the order passed in S.A.No.576 of 2017, the matters have been concluded, I would be rendering the order passed in SA No.663 of 2014 otiose.

8. One order of the Court cannot be defeated by another order of the Court. It requires a harmonious construction. It is here that I have to recall the legal position of law that in a final decree proceeding purchasers of the property of *lis pendens* are proper and necessary parties. This is vide the judgment of this Court in the case of **V.L.Dhandapani v Revathy Ramachandran dated 17.06.2014 [(2014) 3 LW 369(DB)]**. Therefore, I have to give effect to the order passed in S.A.No.663 of 2014 as well as the order passed in Review Application No.165 of 2018.

9. The effect of reading both the judgments harmoniously would be that the parties, who have purchased the property pending the litigation, would have to be given an opportunity to workout their rights and if possible equity in the final decree proceedings. The fact that subsequently the property had been settled in favour of the daughter of the petitioner and she had mutated the revenue records will not assail the purchase that has



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been made by the respondents in the civil revision petition, which is prior in point of time.

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10. Learned counsel would bring to my notice the judgment of this Court dated 19.11.2014 made in S.A.No.943 of 2014 and would state that it bars the persons from re-agitating the issue. A careful reading of the judgment shows second appeal was dismissed on the ground of locus standi and not on the lack of existing right between the parties. Therefore, the lower appellate Court would have to consider whether the impleaded parties would have any right, title or interest in the property and pass a fresh final decree in accordance with law.

11. The vendors of the respondents having a share in the property, I necessarily would have to confirm the order passed by the learned Principal District Judge in I.A.No.5 of 2019 in A.S.No.33 of 2013. Consequently, the civil revision petition is dismissed. No costs. Connected miscellaneous petition is closed.

25.09.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To



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The Principal District Judge,
Tiruvallur.

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V. LAKSHMINARAYANAN,J.

ssm

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