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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2023
Delivered on : 10.11.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.696 of 2023
and
C.M.P(MD)No.3241 of 2023

Karuppaiyan

... Petitioner/Respondent/Plaintiff

Vs.

1.Sudhakar
2.Yasothaiammal
3.Ekambaram
4.Amutha
5.Minor Aravinthan
6.Minor Saleswaran
(5 and 6 respondents represented by
through his natural guardian and
mother 4th respondent)

...Respondent/Petitioner/3rd Party

...Respondents/Defendants

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of allowing of I.A.No.109 of 2022 in O.S.No. 21 of 2008 on the file of the 1st Additional District and Sessions Judge, (PCR), Thanjavur, dated 09.01.2023.

For Petitioners
For R1

For R4 to R6

:Mr.K.R.Laxman
:Mr.G.Rangasamy, for
Mr.A.Arunprasad
:Mr.R.Ghireedharan

**ORDER**

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This civil revision petition is filed against the order, dated 09.01.2023 passed in I.A.No.109 of 2022 in O.S.No.21 of 2008 by the 1st Additional District and Sessions Judge, (PCR), Thanjavur.

2. According to the revision petitioner/plaintiff, he filed a suit in O.S.No.21 of 2008 before the I Additional District and Sessions Court, (PCR), Thanjavur, for passing of a preliminary decree for partition in favour of the plaintiff against the defendant allotting $\frac{1}{2}$ share in the suit properties to the plaintiff by metes and bounds and also to pass a final decree in terms of preliminary decree. During the pendency of the said suit, the first respondent/third party filed a petition in I.A.No.109 of 2022 under Order 20 Rule 18 of C.P.C., praying for an order to allot the property in S.No.180/4B measuring 55 cents (Schedule 17) to him and to set aside the preliminary decree in which the above property was wrongly allotted to the plaintiff in the suit in O.S.NO.21 of 2008 and to implead him as a party in the preliminary proceedings. Thereafter, the revision petitioner/plaintiff filed an application in I.A.No.1 of 2019 for passing of final decree, in which, the first respondent has filed an application in I.A.No.108 of 2022 and the said application was allowed by the trial Court by setting aside the preliminary decree. Against which, the present civil revision petition is filed.



3.The learned counsel appearing for the revision petitioner submitted that originally the suit was filed seeking for partition claiming $\frac{1}{2}$ share in the plaint schedule property. The suit properties were not devolved properly among the legal heirs of Maruthumuthu Pillai. The plaintiff being the co-sharer of the said property and they declined to segregate his share, he filed the suit in O.S.No.21 of 2008. In the said suit, a preliminary decree was passed and the revision petitioner obtained an order of injunction restraining the defendants from alienating the suit property to any third parties. Thereafter, the parties arrived at a compromise. On the basis of the compromise, final decree is yet to be passed. In these circumstances, the first respondent/third party without any legal basis, intervened the suit proceedings, by filing an application to implead himself as a party by claiming that he is a subsequent purchaser of the suit property. The learned counsel further submitted that when there is an order of injunction, the defendants have sold the property, more particularly, when the injunction was in force. Therefore the said alienation is not only invalid but also void and also subject to the result of the suit, on the principles of *lis pendens*. When the said unlawful alienation was executed by the defendants pending the suit proceedings, any alienation done by such defendants is not only subject to the result of the suit, but also hit by the principles of *lis Pendens* and hence, the first respondent/third party cannot maintain a separate cause



action.

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4.As per Section 52 of the Transfer of the Property Act, the first respondent is needless to be heard and needless to be a party, more particularly, when the partition suit has arrived at a final decree proceedings. The implication of the 1st respondent/third party on collusion with the defendant, who violated the order of injunction, in order to drag on the proceedings, by barring the plaintiff from enjoying the fruits of the preliminary decree. Applying the principles of *lis pendens*, the question of implication of the first respondent/third party does not arise and the petition filed by the first respondent to implead himself in the final decree proceedings is unwarranted. However, the Court below has erroneously allowed the said petition, which is hit by Section 52 of the Transfer of Property Act. The learned counsel further submitted that the first respondent claimed that as if he had purchased the property in item No.7, 'A' schedule property of the plaint from the second and third defendants and he constructed a petrol bunk in 22.5 ares in the said property and he is running a petrol bunk from 15.04.2010 and that he claimed possession of the said property and therefore, he has intervened the final decree. The first respondent claim is not at all accepted either in law or on facts and the Court below, without considering the facts and circumstances of the case and also after obtained an order of interim injunction, allowed the first



respondent's claim is absolutely untenable and the same has to be set aside.

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5. He would further submit that the revision petitioner has not admitted the sale deed dated 05.06.2008 executed by the second and third defendants in favour of the first respondent in respect of R.S.No.180/4 and thereafter, the respondent's mother had executed a registered settlement deed dated 23.09.2009, bequeathing the said property to the second respondent and as such, the sale deed through which the first respondent is claiming right is absolutely null and void and without passing the final decree, the second and third respondents alienating the property to the first respondent is violative of the order of injunction. Therefore, the said sale is an unacceptable one and in this regard, the revision petitioner has filed a contempt proceedings against the mother of the second respondent. The suit was taken for trial and after full trial, the Court below passed a preliminary decree by granting $\frac{1}{2}$ share in the suit properties including 17th item of the suit property. As per the preliminary decree, the first respondent's sale deed is non-est in law and he has no locus standi to implead himself in the proceedings and the order of the Court below is liable to be set aside.

6. On the other hand, the learned counsel appearing for the first respondent/third party would submit that only by impleading him in the proceedings, it can be decided whether the sale was executed during the



pendency of the suit and whether the purchaser was a bonafide transferee.

By impleading the purchaser, multiplicity of suits can be avoided. To

support his contention, he has relied upon the decisions in ***Savitri Devi-Vs-***

District Judge, Gorakhpur and others, reported in ***AIR 1999 SC 976***.

7. Heard the learned counsel appearing on either sides and perused the materials available on record.

8. According to the first respondent, he had purchased the property in item No.7, 'A' schedule property of the plaint from the second and third defendants and he constructed a petrol bunk in 22.5 acres in the above property and that he is running a petrol bunk from 15.04.2020. Hence, he claimed possession of the suit property and therefore, it has become necessary for him to intervene in the final decree proceedings.

9. On the other hand, the revision petitioner would submit that without passing of final decree, the second and third respondents alienated the property in favour of the first respondent, which is violative to the order of injunction passed in the preliminary decree. Moreover, the said purchase by the first respondent is hit by the principles of lis pendens. However, the impleadment of the proposed party is necessary for deciding the questions whether the proposed third party is a bonafide transferee and also to avoid



multiplicity of the suits. The aforesaid questions have to be decided by the Court in the suit. If the application for impleadment is thrown without a decision on the aforesaid questions, the proposed party will certainly come up with a separate suit to enforce his alleged rights, which means multiplicity of proceedings. In such circumstances, it cannot be said that the proposed party is neither a necessary nor a proper party to the suit. Order 1 Rule 10 of C.P.C., enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and to settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code. A transferee pendente lite of an interest in an immovable property which is the subject matter of the suit is a representative in interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. It may be that if he has not permitted to be impleaded, he may suffer by default on account of any order passed in the proceedings. Therefore, the trial Court has rightly held that the petitioner has to be heard in the preliminary proceedings, since he purchased a portion of the suit property.

10. In view of the above, the order passed by the trial Court is confirmed and the Civil Revision petition is dismissed. No costs.



Consequently, connected miscellaneous petition is closed.

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10.11.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To

- 1.The 1st Additional District and
Sessions Judge, (PCR),
Thanjavur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

K.GOVINDARAJAN THILAKAVADI, J.

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