



C.R.P.(PD)(MD).No.560 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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L.Umayal

... Petitioner

-VS-

- 1.AR.Subbaiah
- 2.AR.Sevugan Chetti
- 3.AR.Thinnappan
- 4.Visalakshi
- 5.Shanmugavalli
- 6.Parvathi
- 7.R.Navaneethakrishnan (died)
- 8.L.P.Palanisamy
- 9.R.Vijayalakshmi
- 10.S.A.Venkatasubramanian @ Venkatesh
- 11.E.M.Joseph Ravindran
- 12.K.Masooda Badsha
- 13.R.Sivanammal
- 14.J.Gunaselvi
- 15.R.Rajavel
- 16.V.A.Raju
- 17.S.Lakshmanan



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18.S.Sahaya Thobias

19.M.S.Hussain Ahamed

20.M/s.Mumbai Dewan Housing Finance Corporation Ltd.,
Rajam Plaza
Thallakulam
Alagar Koil Street
Madurai

21.SV.Visalakshi

22.P.K.Alagarsamy (died)

23.A.Indirani

24.Subahasini

25.T.Meenal

26.K.Duraiswami Chettiar

27.V.Umadevi

28.S.Valarmathi

29.B.Dharakeswari

30.N.Karuppiah

... Respondents

(Memo recorded. R7 given up as per order dated 02.11.2018)

(Memo recorded. R23 is the legal heir of R22
who is already on record as per order dated 02.11.2018)

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 18.11.2014 in I.A.No.13 of 2011 in O.S.No.09 of 2010 on the file of the District Judge, Sivagangai set aside the same and allow this revision petition as prayed for.



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For Petitioner : Mr.T.Selvan
For M/s.Pala Ramasamy

For R1 to R6 : Mr.P.Thiagarajan

For R15, 16,18 & 24 : Mr.Saravana Prabhu

ORDER

The present revision petition has been filed by the plaintiff in a suit for partition challenging the order of dismissal of an application to implead 24 proposed parties as defendants 7 to 30 in the suit.

2.According to the plaintiff, the proposed parties have purchased the suit schedule properties from defendants 1 and 3 before filing of the suit. However, the said fact came to the knowledge of the plaintiff only from the written statement filed by the defendants. Hence, the plaintiff had filed I.A.No.13 of 2011 to implead the said proposed parties as defendants in the suit.

3.The original defendants in the suit have filed a counter contending that the suit is posted for argument and at this belated time, the present application for impleading new defendants is not maintainable.



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4.The proposed parties have also filed a counter contending that they have purchased the properties from the father of defendants 1 and 3 even before filing of the suit and hence, those properties are not liable for partition at request of the present plaintiff.

5.After hearing all the parties, the trial Court has dismissed the application on the ground that the impleading application is bereft of details about the date of alienation and the properties that were purchased by each one of the proposed parties. Challenging the said order, the present civil revision petition has been filed.

6.The learned counsel appearing for the petitioner/plaintiff had contended that unless the purchasers of the undivided share are impleaded in the suit for partition, she will be put to great hardship during the final decree proceedings. He had further contended that the petitioner came to know about the alienation only after a written statement filed by the co-sharers. He had further pointed out that the proposed parties in their counter have admitted that they have purchased the properties from some of the co-sharers. Therefore, the findings of the trial Court that the impleading application is bereft of any details is not legally sustainable . Hence, he prayed for allowing the civil revision petition.



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7.Per contra, the learned counsel appearing for the original defendants had contended that even though there is an averment in the written statement with regard to alienation of the property, the plaintiff has kept quite and thereafter, during the argument stage the present application has been filed belatedly.

8.The learned counsel for the proposed parties had contended that the properties have been purchased by them even before filing of the suit and the said properties are not liable for partition and hence, they are not necessary parties to the said suit.

9.I have considered the submissions made on either side and perused the materials available on record.

10.As far as a partition suit is concerned, the presence of alienees is only by way of abundant caution to verify whether their original vendors are conducting the suit properly or not. Their presence is very much essential only during the final decree proceedings. In the present case, the plaintiff and the defendants and the proposed parties admit that these alienations have taken place prior to the filing of the suit. Whether the vendors were entitled to alienate their share is the issue that is to be decided during the trial. The preliminary decree is going to decide only the



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quantum of share of each one of the co-sharers. Admittedly, the purchasers are strangers to the family and whatever share is allotted to the original co-sharers, will devolve upon the alienees as per the respective sharers. Therefore, their presence is not necessary during the preliminary decree proceedings. In case, where the plaintiff's share has also been sold, it is settled position of law that any alienation made by other sharers will not binding the plaintiff's share. Therefore, the presence of the alienee during the preliminary proceedings is not essential. Alienee could only be proper parties to the preliminary proceedings and not necessary parties. Therefore, they are necessary parties only during the final decree proceedings.

11.In view of the above said facts, there is no infirmity or illegality in dismissing the impleading application. However, the plaintiff is at liberty to implead the purchasers in the final decree proceedings if she is so advised. This civil revision petition stands disposed of. No costs.

21.02.2023

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

1. The District Judge, Sivagangai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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