



S.A.No.1399 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1399 of 2013

and

C.M.P.No.11947 of 2016

C.Chinnappa

... Appellant/Appellant/Third Party

Vs.

1.Jayamma

2.Devarajamma

3.Thatchayani @ Sulochana

4.Nirmala

...Respondents/Plaintiffs

5.A.M.Mallappa @ Puttaiah

6.Mahadevan

7.Sailashri

8.Bhuvanashri

9.Sudhashri

... Respondents/Defendants.

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 19.07.2013 made in A.S.No.30 of 2011 on the file of the Court of Principal



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Subordinate Judge, Hosur, confirming the judgment and decree dated 15-12-2005 made in O.S.No.128 of 2005 on the file of the Court of District Munsif cum Judicial Magistrate, Denkanikottai.

For Appellant : Mr.R.Agilesh

For Respondents :Mr.P.Mani for R1 to R4

R5 : Served-No appearance

R6 to R9 : Refused-No appearance

JUDGMENT

This case has a checkered history. The suit schedule mentioned properties are items belonging to one Chinna Mallegoudu @ Mallaiah. Mallaiah and his wife Ammaiakka @ Puttamma had one son by name Puttiah and 5 daughters namely Mallamma (deceased), Jayamma, Devarajamma, Dhakshayini @ Sulochana and Nirmala. Mallamma seems to have passed away leaving behind her husband Mahadevan and three daughters namely Sailashri, Bhuvanashri, Sudhashri as her legal heirs.

2. Tmt.Mallamma filed a suit for partition and separate possession in O.S.No.105 of 1974 on the file of the District Munsif Court at Hosur. She sought for the relief of partition by metes and bounds and separate possession of her 1/7th share. The present suit schedule mentioned



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property namely S.No.225 of Arulam village in Denkonikottai taluk,

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3. To put the preliminary decree so obtained into operation, an application was taken out for passing of final decree in I.A.No.1144 of 1975. The said final decree application was allowed on 26.04.1975. At the time of final decree, it was noticed that there were practical difficulties in dividing the house and house sites and therefore, the plaintiff therein, Mallamma, gave up her right with respect to house and house sites and in lieu of this giving up of her share, she was allotted additional extent of 1.40 cents to her share in Survey No.225 of the aforesaid Village.

4. Mallamma initiated execution proceedings to take possession of the properties situated in S.No.225. The Execution petition was numbered as R.E.P.No.2 of 1976. The learned District Munsif at Hosur ordered delivery of possession of the property on 29.01.1976 and the delivery was taken on 01.02.1976 and execution petition was terminated



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on 19.02.1976. By virtue of the aforesaid proceedings, Mallamma became the absolute owner of the suit schedule mentioned property.

5. All things were quiet for a period of nearly 40 years. The defendants 2, 4, 5 & 6 in O.S.No.105 of 1974 presented a fresh suit for partition in O.S.No.128 of 2005. In the meantime, as Mallamma had passed away her legal heirs Mahadevan, Sailashri, Bhuvanashri and Sudhashri were impleaded as defendants 2 to 5. They were served with summons and it seems they had also filed written statement giving forth the details of the previous suits. After having filed the statement they remained *exparte*. Consequently, the trial Court passed the judgment in the following terms:

“இவ்வழக்கில் வாதிகள் ஆஜர்இ வா.சா.1ன் முதல் விசாரனை ஆணையுறுதி ஆவணம் மூலம் தாககல் செய்யப்பட்டுள்ளது. வா.சா.ஆ 1 முதல் 3 குறியீடுசெய்யப்பட்டது. வாதிகளின் வழக்கு நிரூபிக்கப்பட்டுள்ளது. எனவே வாதிகள் வழக்குரையில் கோரியபடி தாவா சொத்துக்கு சேம்பாகங்களாக நலங்கண்டு பிரித்து அதில் வாதிகளுக்கு 4பங்குகளை ஒதுக்கி சுவாதீனம் கொடுக்க செலவுதொகையுடன் முதல்நிலை தீர்ப்பான செய்யப்படுகிறது. மேலும் தாவா



சொத்துகளில் 4/6 பங்கை பிரதிவாதிகள்
பராதீனம்செய்யக்கூடாது என நிரந்தரஉறுத்துக்
கட்டளை பிறப்பித்தும் தீர்ப்பளிக்கிறேன்.”

6. This *exparte* decree was passed on 15.12.2005. In order to set aside the *exparte* judgment and decree, an application was taken for condonation of delay of 40 days in filing the petition under Order 9 Rule 13 CPC. This application was numbered as I.A.No.99 of 2007. It was application was allowed on the condition of payment of cost of Rs.500/- on or before 21.04.2008. Since the cost was not paid, the application stood dismissed on 25.04.2008. As the preliminary decree had already been passed in the proceedings, an application was taken out for passing of final decree in I.A.No.489 of 2008. This application was allowed by an order of the Court, on 05.09.2011.

7. While these are the Court proceedings, the defendants in O.S.No.128 of 2005, namely legal heirs of Mallamma, sold the property in favour of the appellant Chinnappa. He registered his sale through a deed dated 07.05.2007. When the Advocate Commissioner visited the suit property, the appellant herein, who was a 3rd party to the proceedings, seems to have objected to the Advocate Commissioner



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stating that he had purchased the property. Without taking note of this objection, the Advocate Commissioner submitted a report, which resulted in passing of the final decree, dated 05.09.2011.

8. Coming to know about the 2nd suit for partition, the appellant herein, filed an appeal in A.S.No.30 of 2011 before the Subordinate Judge at Hosur. The said appeal was dismissed by the learned Subordinate Judge on 19.07.2013 holding that since the appellant was a *lis pendens* purchaser, who did not implead himself pending the suit, he cannot maintain the appeal and therefore, dismissed the appeal.

9. Feeling aggrieved by this dismissal, the present second appeal had been filed before this Court. The second appeal was admitted on 18.12.2013 on the following substantial questions of law:

- 1) Whether the lower Appellate Court had not erred in law in deciding that the respondents 1 to 4/plaintiffs were barred from filing the present suit O.S.No.128 of 2005 under Section 11 of the Civil Procedure Code?*
- 2) Whether the lower Appellate Court is correct in decreeing the subsequent suit for partition viz., O.S.No.128 of 2005 when earlier partition suit viz.,*



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O.S.No.105 of 1974 had been decided regarding the same property and between same parties?

3) Whether the trial Court is correct in decreeing the suit for partition as ex-parte when earlier suit for partition was held in O.S.No.105 of 1974 and suppressed in the present suit?

10. After the appeal had been admitted, the appellant has taken out an application in C.M.P.No.11947 of 2016 under Order XLI Rule 27 to receive the following documents:-

Sl.No.	Date	Description of Documents	Nature of documents
1.	====	F.M.B. of Survey No.225 – Extent = 5.03.5 hectares	Original
2.	25.02.1974	Suit Register in O.S.No.105 of 1974 on the file of the Court of the District Munsif, Hosur	Certified Copy
3.	28.06.1974	Decree in O.S.No.105 of 1974 on the file of the Court of the District Munsif, Hosur	Certified Copy
4.	26.04.1975	Order in I.A.No.1144 of 1974 in O.S.No.105 of 1974 of the file of the Court of the District Munsif, Hosur	Certified Copy
5.	30.07.1945 19.02.1976	Execution Petition in R.E.P.No.02/1976 in O.S.No.105 of 1974 on the file of the Court of the District Munsif, Hosur with Docket Order	Certified Copy
6.	07.05.2007	Sale Deed executed by (1) Mahadevan, (2)Mrs. Sailashree, (3) Bhuvaneshwari and (4) Mrs.Sudhashree (Vendors) in favour of Mr.C.Chinnappa (Purchaser) – Petitioner	Certified Copy

11. Though a counter had not been filed to the said application,



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Mr.P.Mani, the learned counsel for the respondents would vehemently contend that none of these documents are relevant to the facts of the case and since they have not been filed before the lower appellate Court, they should not be received in the present second appeal.

12. A perusal of the aforesaid tabular columns shows that Document No.1 is a revenue record. A revenue record is not an essential document, even as per the questions of law that has been framed by the appellant and therefore, the first document is rejected. Insofar as the Document No.6, sale deed dated 07.05.2007, this is the transaction which has taken place between the defendants 2 to 5 and the appellant. It is under this document that defendants 2 to 5, who had succeeded in the previous suit, had transferred their title in favour of the appellant. There is no dispute on the previous Court proceedings initiated by Mallamma, the predecessor of the defendants or the purchase by the appellant. This document shows that pending the litigation, the defendants 2 to 5 had alienated the property in favour of the appellant. Therefore, it is an essential document for the purpose of considering the *locus* of the appellant.



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13. Insofar as the Document Nos.2 to 5 are concerned they are the proceedings related to the previous partition suit that had taken place in the family which I feel, would be essential for the purpose of deciding the matter in this appeal. In fact, these documents have been produced along with the written statement filed by the defendants 2 to 5. Therefore, while rejecting C.M.P.No.1194 of 2016 with respect to Document No.1, Document Nos.2 to 6 are received in evidence in exercise of the powers under Order XLI Rule 27 and are marked as Ex.B1 to B5 in the appeal. This disposes of the application filed under Order XLI Rule 27.

14. Apart from Order XLI Rule 27, this Court is vested with the power under Section 103 of the Code of Civil Procedure read with Section 107(d) to take additional evidence that may be essential for disposal of the case. I exercise the said power and receive the documents. Insofar as the procedure under Order XLI Rule 28 is concerned, in this particular case, the respondents cannot object to the Document Nos.2 to 5, as they are parties to the previous proceedings as pointed out above. The suit property in the present suit also relates to the same suit property in item No.1 in the previous suit and hence, the procedure under Order XLI Rule 28 being otiose, it is not being followed.



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WEB COPY 15. Insofar as the appeal is concerned, I would re-frame the questions of law as follows:-

- 1) Whether the respondents/plaintiffs in the present case can maintain a 2nd suit for partition for the same suit schedule mentioned property?
- 2) Whether the plaintiffs could maintain the 2nd suit for partition without seeking for setting aside the previous decree?
- 3) Whether the judgment of the trial Court answers the requirements of “the judgment” within the meaning of the Code of Civil Procedure?

16. For the sake of convenience, the parties shall be referred as to their ranks in the suit and the questions of law are being clubbed together and heard and answered accordingly.

17. I heard Mr.Agilesh for the appellant and Mr.P.Mani for the respondents and I have gone through the records as well as carefully perused the judgment and decree of the Courts below.

Whether a 2nd suit for partition is maintainable?

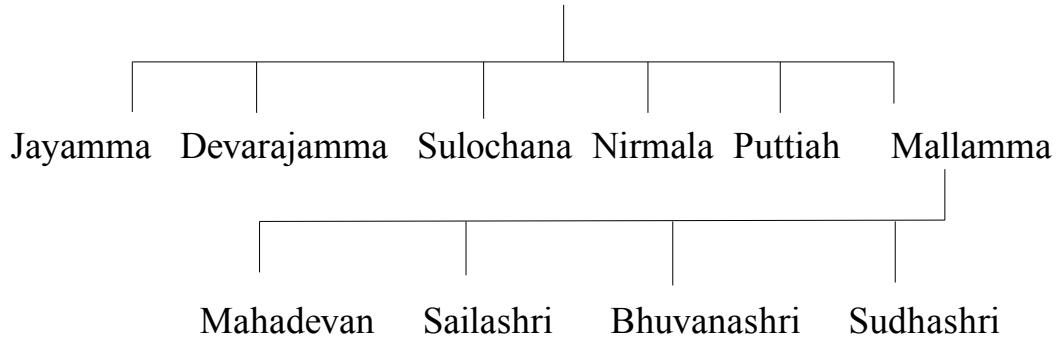
18. The records reveal that all the properties were joint family



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properties of one Chinna Mallegoudu. On his death, the properties devolved on his wife and children and heirs of his pre deceased daughter namely Mallamma.

Chinna Mallegoudu @ Mallaiah + Ammaiakka @ Puttamma



19. On the death of Chinna Mallegoudu, his married daughter Mallamma brought forth the suit for partition in O.S.No.105 of 1974. The said suit was presented on 08.10.1973 as is clear from the Ex.B1. The suit was taken on file on 25.02.1974 and it came to be decreed by the learned District Munsif who granted preliminary decree of 1/7th share in favour of Mallamma. Mallamma took out an application in I.A.No.1144 of 1974 for passing of final decree in O.S.No.105 of 1974 which ended in her favour, on 26.04.1975. This is clear from Ex.B2. She had filed an execution petition to take delivery of possession of the property and she was successful in the same. As it is seen from Ex.B3, on 19.02.1976, the execution petition was also terminated recording the delivery on



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01.02.1976. Therefore, from Ex.B1 & Ex.B2 it becomes clear that Mallamma was the owner of 5 acres of land in S.No.225 of Arulam village. Out of total extent of 12.44 acres which was available in the family, Mallamma had been enjoying the property to the aforesaid extent on the basis of the decree. The record reveals that she passed away on 26.09.1995 leaving her husband Mahadevan and three daughters namely Saila shri, Bhuvana shri and Sudha shri as her legal representatives.

20. This would show that the property was not only divided between the legal heirs of Chinna Mallegoudu, but on taking possession of the same, Mallamma was in possession and enjoyment of the same for two decades and thereafter, on her death, her legal heirs, namely the respondents 6 to 9 in the present appeal, succeeded to the estate.

21. This brings us to the aspect as to whether a property which had been divided by the Court in a suit for partition can be mulcted with a second suit for partition. It is too well settled for me to reiterate that the 2nd suit for partition is not maintainable. The logic being as the properties are partitioned, there is no jointness left in them to be partitioned again.



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22. A perusal of Ex.B1 to Ex.B3 makes it clear that the suit for partition had been filed, decreed and delivery had also been taken on account of which Mallamma, the predecessor in title of the respondents 6 to 9 had become the separate owner of the property. The second suit for partition could not have been maintained had the plaintiff disclosed O.S.No.105 of 1974 and the connected proceedings. It is also an admitted case that the decree in O.S.No.105 of 1974 had attained finality as it had not been challenged.

23. It is pertinent to point out that the plaintiffs herein were the defendants in the previous suit. Therefore, any decree that had been passed will be binding on them. A decree which has been passed by the Court can certainly be challenged in a subsequent proceeding under certain specific situations. To give an instance, a person, who is a party to the previous suit, can seek for cancellation of the decree under certain conditions and he/she has to pay the appropriate Court fee as required under Section 40 of the Tamil Nadu Court Fee and Suit Valuation Act.

24. A perusal of the plaint in O.S.No.128 of 2005 shows that it is a suit for partition *simplicitor* and no relief of cancellation or even a relief



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of declaration that the decree is not binding was sought for. As long as the decree in O.S.No.105 of 1974 stands, the plaintiffs in O.S.No.128 of 2005 could not have filed a suit for partition *simplicitor* and such a proceeding is certainly not maintainable.

Whether the judgment of the trial Court answers the requirement of a “judgment”?

25. Further, a perusal of the judgment and decree in O.S.No.128 of 2005 shows that the judgment does not answer the requirements of the judgment within the Code of Civil Procedure. The learned judge has not framed any issues and he has merely decreed the suit in the absence of the defendants. It is expected that the Court applies its mind before granting the decree even if its *ex parte* one. The Court should have discussed or atleast given summary of the written statement prior to proceeding with its decision.

26. A perusal of the written statement filed by the defendants 2 to 5, who are the respondents 6 to 9 herein, shows that the entire transactions starting from 26.05.1975 and the other proceedings had been



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placed before the trial Court in the present proceedings. Despite the same, by a non-speaking order, the trial Court has granted a preliminary decree for partition. I only have to refer to the judgment of this Court in **Meenakshisundaram Textiles V. Valliammal Textiles Ltd., Tiruppur, reported in (2011) 7 Mad LJ 652** where it was held as follows:

“5. We have heard the respective learned counsel on either side on the above question. Section 2(9) of the Code of Civil Procedure defines a “judgment” as meaning, the statement given by the judge on the grounds of referable, which read as under:-

“4. Judgments of other Courts.--Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Court.--Judgments of other Court shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

Order XX Rule 4(1) relates to the judgment of a Court of Small Causes. Inasmuch as the said judgment does not require more than the points for determination and that the decision thereon, a judgment of a Court of Small Causes shall not fall under Section 2(9) of the Code of Civil Procedure. Insofar as the judgment of other Court is concerned, in terms of Order XX Rule 4(2), it shall contain



a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision and therefore it shall fall under Section 2(9) of the Code of Civil Procedure and in that sense, all the ingredients contained in Order XX Rule 4(2) must be available in that judgment. This is more so in view of the provisions of Order XX Rule 5 relating to the duty of the Court to state its reasons on each issue. That Rule reads as under:-

“5. Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.”

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as “judgment”. The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal.



The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

15. As against the requirement of a judgment, Section 2(14) of the Code of Civil Procedure relating to an “order” is also referable. In terms of that Section, an “order” means the formal expression of any decision of a Civil Court which is not a decree. When it comes to the judgment, it should state the grounds of a decree, which includes an order. Hence, there is a vast difference between a judgment, a decree based on such judgment and an order.

16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte decree. Hence, even for



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an ex parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above.”

Therefore, the decree and judgment are unsustainable.

Whether a *lis pendens* purchaser can maintain an appeal?

27. On appeal, the learned appellate Judge seems to have been carried away by the fact that purchaser *lis pendens* is not entitled to maintain an appeal. The Code of Civil Procedure does not specify as to who could maintain an appeal. However, it is settled position of law that even a stranger to the proceeding can file an appeal, if he satisfies the Court that he is an “aggrieved person”. I do not have to strain myself as a Division Bench of this Court as early as in 1952, has laid down, the test for a person to file an appeal under Section 96 or Section 100 of the Code of Civil Procedure.

28. The Division Bench held so in ***K. Ponnalagu Ammani V. State of Madras, (1953) 66 LW 136*** and the said test is extracted below:

“It would be improper to grant leave to appeal to every



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person who may in some remote or indirect way be prejudicially affected by a decree or judgment. Ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.

To complete the narration, the view taken by the Division Bench in ***K.Ponnalagu Ammani V. State of Madras*** has been approved by the Supreme Court in ***V.N.Krishna murthy and another V. Ravikumar and others (2020) 9 SCC 501***. Paragraph No.20 which is extracted below:

“Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceedings and who would be precluded from attacking its correctness in other proceedings”

29. Applying the test in the present case Chinnappa, the purchaser



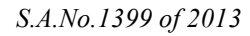
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from defendants 2 to 5/respondents 6 to 9 is a “person aggrieved” as the decree has been passed against the vendor and he would be bound by the same by the principle of *lis pendens*. Therefore, the lower appellate Court, while rightly granting the leave, has not exercised the powers which had been vested with it under Section 96 and had gone back in a full circle and held, being a *lis pendens* purchaser he is not entitled to challenge the preliminary decree which had been passed in the suit. *Lis pendens* commences from the time of presentation of the plaint and continues till the decree is executed. Therefore, the fact that appellant did not get himself impleaded pending the suit does not take away his right to file an appeal.

30. In the light of the categorical view laid down by the Division Bench, which has been approved by the Supreme Court, I am unable to sustain the view taken by the learned Subordinate Judge at Hosur.

31. Mr.Mani, would contend that an appeal cannot be maintained by the purchaser in the light of the judgment in ***C.Rameshwaran and 4 others Vs. N.Sambandam and 8 others 2009 (2) CTC 119.***

32. A careful perusal of the said judgment shows it was a case



“what was conveyed to them by the plaintiffs in the suit, was only what the plaintiffs themselves are deemed to have had by virtue of the judgment. In other words, the petitioners, who claim under the plaintiffs, are entitled only to what the plaintiffs were declared to be entitled to by the judgment.”

33. This view makes it clear that the parties who have succeeded in a suit are entitled to transfer their interest to 3rd party and a party who purchases *lis pendens* would be bound by the result of the litigation. This view voices Section 52 of the Transfer of Property Act which speaks about the effect of pendency of the litigation on a purchaser.

34. I should hasten to add that the decision of the above said Division Bench of this Court had not been drawn to the learned Judge. Furthermore, the right of the purchaser to defend the title of the vendor has not been dealt with. In any event, when two judgments, one of the Division Bench and other of the learned Single Judge are placed before



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me, I would necessarily have to follow the judgment of the Division Bench.

35. Apart from that, even on facts, here is a case where the appellant Chinnappa traced his title to the first suit for partition in which his vendors/predecessors in title had succeeded and had taken possession through Court.

36. Mr.Mani would then rely upon ***Pannala Renuka Vs. Kavali Venkataiah, AIR 2007 AP46*** to argue that the alienee of the property pendente lite is bound by the decree and cannot seek impleading as a right in the suit. I am afraid that the said judgment cannot be followed by me in the light of the decision of the Division Bench of this Court in ***V.L.Dhandapani Vs. Revathy Ramachandran & others reported in 2014 (3) LW 769 (DB)*** wherein it was held that a *lis pendens* purchaser is entitled to be impleaded as a party in the proceedings. As between the Division Bench of Madras High Court and a learned Single Judge of the Andhra Pradesh High Court, I am necessarily bound by the view of the Division Bench of the Madras High Court and I follow the same.



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37. To complete the narration, I have to add that the view taken in

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V.L.Dhandapani Vs. Revathy Ramachandran & others, is in line with the view taken by the Supreme Court in ***Thomson Press (India) Limited Vs. Nanak Builders and investors private limited and others*** reported in ***(2013)5 SCC 397*** wherein His Lordship Justice Iqbal, speaking for the Bench has held that a *lis pendens* purchaser is entitled to be impleaded as a party. I have to refer to ***Thomson Press (India) Limited Vs. Nanak Builders and investors private limited and others*** reported in ***(2013)5 SCC 397*** case in order to distinguish the other authorities cited by Mr.Mani namely

(i) ***Surjit Singh and others vs. Harbans Singh and others***, AIR 1996 SC 135. (ii) ***Keshrimal Jivji Shah and Anr. Vs Bank of Maharashtra and Ors. 2004 (3) MHJ 893***

38. By relying on these authorities, Mr.Mani would argue that the second portion of the decree has placed an embargo against alienation of the property by respondents 6 to 9 in the appeal. The purchase made by the appellant is illegal and therefore, the Court cannot recognize the same.



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39. I have followed the said judgment in ***K. Ponnalagu Ammani V. State of Madras, (1953) 66 LW 136*** and ***V.N.Krishna murthy and another V. Ravikumar and others (2020) 9 SCC 501*** and have taken a view that *lis pendens* purchaser is a person aggrieved by the decree and is entitled to file an appeal against the decree. When he is entitled to file an appeal against the decree, necessarily he is entitled to argue that the decree passed by the trial Court is wrong. Therefore, I prefer the latest view of the Supreme Court in ***V.N.Krishna murthy and another V.Ravikumar and others (2020) 9 SCC 501*** and the view in ***Thomson Press (India) Limited Vs. Nanak Builders and investors private limited and others*** reported in ***(2013)5 SCC 397*** and hold that a purchaser *lis pendens* is entitled to maintain an appeal and urge the correctness of the decree that had been passed by the trial Court against his vendors.

40. In the light of the above discussion, I have to hold that

- 1) the 2nd suit for partition is not maintainable
- 2) under exceptional circumstances, a 2nd suit for partition can be filed, if the previous decree is either challenged or sought to be set aside/cancelled,



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3) The judgment passed by the Civil Court should answer the requirements of Section 2(9) of the Code of Civil Procedure read with Order XX Rule 5 and failure to follow the same renders the judgment illegal.

4) A *lis pendens* purchaser is entitled to maintain a decree passed against his vendor.

41. Having come to these conclusions, I necessarily have to allow the appeal and accordingly,

1) S.A.No.1399 of 2013 is allowed

2) The judgment and decree of the learned Principal Subordinate Judge at Hosur in A.S.No.30 of 2011 dated 19.07.2013 in confirming the judgment of the Court of the learned District Munsif cum Judicial Magistrate Denkinikottai in O.S.No.128 of 2005 dated 15.12.2005 are set aside

3) O.S.No.128 of 2005 shall stand dismissed.



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42. Considering the fact that important questions of law had been

raised and answered by Mr.P.Mani, I am not inclined to impose costs.

02.02.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

dpa

To:

- 1.The Principal Subordinate Judge,
Hosur,
- 2.The District Munsif cum Judicial Magistrate,
Denkanikottai.
- 3.The Section Officer,
Vernacular Section,
High Court of Madras.



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