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C.R.P.(PD).No.2381 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.2381 of 2024 &
C.M.P.No.12512 of 2024

Manohar Babu

... Petitioner

-Versus-

M/s.Prakruthi Homes,
A Partnership firm represented
By its partners,
1.R.Ramesh Babu
2.R.Mohan
3.Lakshamma
4.V.Narayan Reddy
5.V.Krishna Reddy
6.V.Suresh
7.Ramesh
8.Padma
9.A.Gurumoorthy
10.G.Aruna
11.Meena
12.G.Gajendran
13.A.Krishna Reddy
14.K.Amrish
15.K.Sekar
16.A.Venkatesamy
17.V.Barath

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by the learned Additional District Judge,



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Hosur on 03.11.2023 in I.A.No.3 of 2022 in O.S.No.25 of 2021.

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For Petitioner : Mr.P.T.Perumal

ORDER

The civil revision petition arises against the order of the learned Additional District Judge, Hosur in I.A.No.3 of 2022 in O.S.No.25 of 2021 dated 03.11.2023.

2. It is the case of the civil revision petitioner that the property originally belonged to one Petha Gurappa. He would state that being a legal heir of the youngest brother of the said Petha Gurappa, Pillakayappa @ Chinna Muniappa, he is a sharer of the suit schedule mentioned properties involved in the present suit. He would state that between the very same parties, a suit for partition was filed in O.S.No.118 of 2018 on the file of the learned Additional District Judge at Hosur. In the said suit, a preliminary decree came to be passed, against which a regular appeal has been preferred before this Court in A.S.No.223 of 2022. This court has granted stay of passing of final decree on 07.06.2022.

3. In the mean time, taking advantage of the fact that there is no relief of injunction restraining the defendants from alienating the property, the 26th



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respondent in A.S.No.223 of 2022 entered into an agreement of sale with the other co-sharers and presented O.S.No.25 of 2021.

4. The grievance of the petitioner is that as he is a co-sharer, he attempted to implead himself in the suit for specific performance in O.S.No.25 of 2021, which came to be dismissed by the impugned order.

5. I have heard Mr.P.T.Perumal for the petitioner.

6. According to Mr.P.T.Perumal, as a co-sharer, the petitioner is entitled to implead himself in the suit for specific performance filed by the 26th respondent in O.S.No.25 of 2021. He would state that the entire idea of the 26th respondent in filing the suit for specific performance is to knock off the property from the possession of the joint family and create third party interest and thereby, force the parties in the partition suit to file fresh applications for impleading the parties who would have purchased the properties from the first respondent herein/26th respondent in A.S.No.223 of 2022.

7. The position of law insofar as impleading of a third party in a suit for specific performance is clear. A person who is not a party to the agreement is



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neither necessary nor proper to the suit. The said person need not be impleaded.

This position of law has been settled by the Supreme Court in ***Kasthuri vs. Iyyamperumal, (2005) 6 SCC 733***. The Supreme Court specifically held that a stranger to an agreement is not a necessary party to the proceedings.

8. The civil revision petitioner being a stranger to the agreement dated 03.10.2016 obviously cannot get himself impleaded in the said proceedings. At this stage, Mr.P.T.Perumal would contend that if O.S.No.25 of 2021 results in a decree, then it would put the petitioner in serious loss and prejudice as it will be creating third party interest over the properties which are the subject matter of the proceedings in O.S.No.118 of 2018 and A.S.No.223 of 2022.

9. The principle of *lis pendens* does not prevent alienation of a property by a sharer. All that it declares is that a purchaser from such sharer will only be entitled to get what his vendor could have obtained in the decree. The remedy for the petitioner is not to implead himself in a suit for specific performance, but to seek such interlocutory reliefs as is permissible including the relief of injunction not to alienate the property in A.S.No.223 of 2022.

10. Therefore, I am not inclined to entertain this revision. This civil



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revision petition **is dismissed** leaving it open to the petitioner to workout his right in the pending appeal. No costs. Consequently, the connected miscellaneous petition is closed.

18.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

The Additional District Judge, Hosur



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V.LAKSHMINARAYANAN, J.

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