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C.R.P.Nos.2164 & 2165 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Revision Petition Nos.2164 & 2165 of 2024

and

C.M.P.No.11510 & 11516 of 2024

C.R.P.No.2164 of 2024:

1.P.Tamilvannan

2.A.Ravichandran

3.P.Shanthi

4.A.Chitra

5.D.Gandhimathi

6.C.Chinnadurai

..... Petitioners

-Versus-

A.Sevanthan (Died)

1.S.Sivaraj

2.S.Sivakumar

3.R.Madheshwari

4.Santhanalakshmi

5.Minor K.Sivaramakrishnan

Rep. by Guardian/Mother-Santhanalakshmi (4th respondent herein)

6.Rajammal

Sundarambal (Died)

7.Ranjani

8.Sulochana



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9.Punithavathi

10.Gokul @ Prakash

Manimegalai (Died)

11.Vadivelan

12.Raja

13.Amaravathi

14.Marimuthu

15.Subramanian

16.V.Jagannathan

17.C.Periyasami

18.V.Rangarajan

19.Durgadevi

20.S.Surendran

21.S.Sisubalan

..... Respondents

Prayer in C.R.P.No.2164 of 2024: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 06.03.2024 passed by the learned I Additional Subordinate Judge, Salem, in I.A.No.6 of 2023 in I.A.No.356 of 2016 in O.S.No.83 of 2011.

C.R.P.No.2165 of 2024:

P.Kannan

..... Petitioner

-Versus-

A.Sevanthan (Died)

1.S.Sivaraj

2.S.Sivakumar



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3.R.Madheshwari

4.Santhanalakshmi

5.Minor K.Sivaramakrishnan

Rep. by Guardian/Mother-Santhanalakshmi (4th respondent herein)

6.Rajammal

Sundarambal (Died)

7.Ranjani

8.Sulochana

9.Punithavathi

10.Gokul @ Prakash

Manimegalai (Died)

11.Vadivelan

12.Raja

13.Amaravathi

14.Marimuthu

15.Subramanian

16.V.Jagannathan

17.C.Periyasami

18.V.Rangarajan

19.Durgadevi

20.S.Surendran

21.S.Sisubalan

..... Respondents

Prayer in C.R.P.No.2165 of 2024: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated



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06.03.2024 passed by the learned I Additional Subordinate Judge, Salem, in I.A.No.7 of 2023 in I.A.No.356 of 2016 in O.S.No.83 of 2011.

*For Petitioner (s) : Mr.N.Umapathi for petitioners
in both CRPs*

*For Respondent (s) : Mr.T.Saikrishnan
for RR1 to 5 in both CRPs
No Appearance for RR6 to 21 in
both CRPs*

COMMON ORDER

These civil revision petitions have been filed by the third parties whose request to implead them in the final decree proceedings in I.A.No.356 of 2016 were turned down by the learned Additional Subordinate Judge, Salem.

2. The revision petitioners are third parties to the final decree proceedings who claim to have purchased some portions from out of the undivided shares in the suit schedule mentioned properties. The respondents 1 to 7 were the plaintiffs and the other respondents were either the defendants in the suit or the legal heirs of the deceased defendants. Originally there were 12 defendants in the suit. Subsequently, defendants 13 to 15 were impleaded in the suit.

3. The suit in O.S.No.83 of 2011 was filed originally by the respondents



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1 to 5 for preliminary decree for partition in the suit schedule mentioned properties and for permanent injunction restraining the defendants 1 to 10 from in any way alienating or encumbering the suit scheduled mentioned properties to any third parties including the plaintiffs' share and for permanent injunction restraining the defendants 11 and 12 from laying the portion measuring 50 cents in the suit 4th Item of the properties into several plots. The plaintiffs along with the suit filed an interlocutory application for temporary injunction restraining the defendants from alienating or encumbering the suit schedule mentioned properties pending disposal of the suit. In the said application, the court below, had granted an order of interim injunction restraining the defendant from alienating the suit properties pending disposal of the suit by order dated 28.02.2011 and the order of interim injunction was made absolute by order dated 11.08.2011. Subsequently, the suit itself came to be decreed on 09.10.2015 after contest declaring that the plaintiffs are entitled to 1/6th share together in the suit schedule mentioned properties Thereupon, the plaintiffs filed an application in I.A.No.356 of 2013 seeking to pass a final decree for division of the suit properties and for allotment of the plaintiffs' 1/6th share in the suit schedule mentioned property by metes and bounds by appointing an Advocate Commissioner. It seems that an Advocate Commissioner was



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appointed by order dated 16.03.2022 to make his suggestions for the division of the properties into 6 equal shares by metes and bounds and allotment of 1/6 share to the plaintiff. At that stage, an application in I.A.No.6 of 2023 was filed by the revision petitioners in C.R.P.No.2164 of 2024 and the other application in I.A.No.7 of 2023 was filed by the revision petitioner in C.R.P.No.2165 of 2024 seeking to implead themselves in the final decree proceedings.

4. The revision petitioners pleaded in the impleading applications that they have purchased some of the portions in the suit schedule mentioned properties pending suit from one of the co-owners between 2012 and 2022. the transferee pendente lite are necessary parties for complete, effective and adequate adjudication of the dispute while passing the final decree, as allotment of properties would be made only in the final decree.

5. The revision petitioners further pleaded that they are bonafide purchasers and therefore, they are entitled to be impleaded in the final decree proceedings as they are proper and necessary parties and adding them as parties would avoid the multiplicity of the proceedings.

6. Those applications were opposed by the plaintiffs on the ground that the revision petitioners have purchased some of the portions in the suit schedule



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mentioned properties during the pendency of the suit that too when the order of injunction was in force. Therefore, the revision petitioners are not entitled to be impleaded as parties to the present final decree proceedings.

7. The court below, after considering the entire issue, particularly, the properties having been purchased by the revision petitioners pendente lite and when the interim order of injunction restraining the co-owners from in any way alienating the suit schedule mentioned properties was in force, turned down the requests of the civil revision petitioners to implead them in the final decree proceedings. While dismissing the impleading applications, the court below has recorded a specific finding that though the plaintiffs had expressed no objection for allotment of the properties sold to the revision petitioners to their vendors' share, no prejudice would be caused to the revision petitioner if they are not impleaded as party respondents. Challenging the orders dismissing the impleading petitions, the third parties are before this court with the present revision petitions.

8. Heard Mr.N.Umapathi, learned counsel for the revision petitioner(s) in both the revision petitions and Mr.T.Saikrishnan, learned counsel for the respondents 1 to 5 in both the revision petitions.



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9. The learned counsel for the revision petitioner(s) would submit that merely because the revision petitioners purchased some portions in the suit schedule mentioned properties pendente lite despite the restraint order by way of temporary injunction not to alienate or encumber the properties, that by itself cannot be a ground to reject their applications for impleading them in the final decree proceedings. If only they were impleaded, they could work out their equities while allotting properties.

10. The learned counsel appearing for the revision petitioners placing reliance upon the judgement in the case of **Yogesh Goyanka v. Govind and others** [Civil Appeal No.7305 of 2024 dated 10.07.2024, wherein the Hon'ble Supreme Court has allowed the pendente lite purchasers to be brought on record in order to protect their interests, particularly, when the transferor failed to defend the suit or where there is a possibility of collusion.

11. The learned counsel for the **revision petitioners** would also place reliance on the judgement in the case of **Jude Prathap v. Bavani Rani and others** [C.R.P.(MD) No.307 of 2019 dated 10.07.2024] in support of his contention that purchaser pendente lite is a necessary party to be impleaded in the final decree proceedings.



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12. Per contra, the learned counsel for the respondents 1 to 5 would submit that pendente lite the revision petitioners purchased the properties in violation of the order of interim injunction against their vendors restraining from alienating the properties and therefore, the revision petitioners cannot be brought on record.

13. In support of his above contention, the learned counsel for the respondents 1 to 5 would place reliance on the judgement in **Surjit Singh v. Harbans Singh** [(1995) 6 SCC 50].

14. The learned counsel for the respondents 1 to 5 would, however, contend that the right of the revision petitioners has already been protected as the plaintiffs themselves have clearly stated as seen from the finding recorded by the court below that they had no objection in allotting the sold item in favour of the vendors of the revision petitioners. Therefore, according to the learned counsel for the respondents 1 to 5 the revision petitioners need not be impleaded as party respondents in the final decree proceedings.

15. I have considered the rival submissions carefully.

16. No doubt, in law, there is no bar to transfer an undivided interest in a

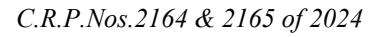
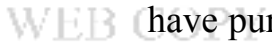


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property by a co-owner. The Hon'ble Supreme Court has been consistently holding that a pendente lite purchaser from a co-owner will also be impleaded and heard while final decree proceedings. In the judgement cited by the learned counsel for the revision petitioners in the case of **Yogesh Goyanka v. Govind** (cited supra), the Hon'ble Apex Court has permitted impleadment of the *pendente lite* purchaser on the ground that there is no bar to the impleadment of the transferee *pendente lite* with notice and permitting the impleadment of a *transferree pendente lite* would protect their interests, especially, when the transferor failed to defend the suit or there is possibility of collusion.

17. In the case of **Jude Prathap v. Bavani Rani and others** [C.R.P.(MD) No.307 of 2019 dated 10.07.2024], this court has held that purchaser pendente lite is a necessary party to be impleaded in the suit proceedings taking note of the fact that the property was purchased in violation of an order of interim injunction.

18. Be that as it may, the fact remains that in this case, admittedly, there was an order of interim injunction in force against the vendors of the revision petitioners from alienating the suit schedule mentioned properties pending disposal of the suit and such prohibitory interim order was passed as early as on 28.02.2011 and the order of interim injunction was made absolute by allowing



19. In **Surjit Singh v. Harbans Singh** [(1995) 6 SCC 50], the Honble Supreme Court has held as follows:-

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lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders.”

20. In the instant case, the appellants have admittedly purchased the undivided shares of the defendants. Because of the purchase by the revision petitioners of the undivided share in the suit property, the rights of the plaintiffs in the final decree proceedings will not affect his right in the suit property by enforcing a partition. However, it is relevant to note that the plaintiffs themselves submitted before the court below that the properties purchased by the revision petitioners could be allotted to the share of their



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vendors. In such view of the matter, no prejudice would be caused to the revision petitioners if they are not impleaded as party respondents in the final decree proceedings. If the properties sold to the revision petitioners are allotted to the shares of their vendors, that would take care of the right of the revision petitioners. Thus, this court does not find any merit in the revision petitions and the same must fail.

In the result, the civil revision petitions are dismissed. No costs. Consequently, connected CMPs are closed.

Index : yes / no
Neutral Citation : yes / no
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To
1.The I Additional Subordinate Judge, Salem, Salem District.



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N.SATHISH KUMAR.J.,
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