



C.R.P. (PD) .No.3964 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3964 of 2016
and C.M.P.No.20108 of 2016

S.Kavitha

.. Petitioner

Vs.

1.Mariammal (died)

2.Lakshmi

3.Chinnammal

4.Muniyammal

5.Meenachi

6.Parameswari

Muniyammal (died)

7.Narayanan

8.Angamuthu

9.Ramar

10.Sellammal

11.Thangavel Gounder



12.Sadaiyammal

13.Sellam

14.Murugan
Respondents

..

(R1 died. RR 11 to 14 are brought on record as LR's of the deceased R1 viz., Mrs.Mariamammal vide order of this Court dated 20.11.2024 made in C.M.P.Nos. 10953 to 10955 of 2024 in C.R.P.No. 3964 of 2016)

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the fair and decretal order dated 17.10.2016 passed in I.A.No.921 of 2016 in O.S.No.100 of 2010 on the file of the Sub Court, Attur.

For Petitioner : Mr.R.Ganesh Kumar

For RR 3, 5 & 6 : No appearance

ORDER

This civil revision petition arises against the order passed by the learned Subordinate Judge, Attur, in I.A.No.921 of 2016 in O.S.No.100 of 2010 dated 17.10.2016.

2.The civil revision petitioner is a third party to the proceedings.



3.O.S.No.100 of 2010 is a suit seeking for partition and separate possession. The case of the plaintiff is that the property was originally possessed by one Arumuga Gounder and Palanimuthu Gounder as a joint family property. On the death of Arumuga Gounder, his son Palanimuthu Gounder succeeded to the estate. Palanimuthu Gounder married one Janaki Ammal and from the wedlock, one son and two daughters were born. Rama Gounder was the son, Muniammal was the first daughter and the plaintiff Mariammal was the other daughter. Palanimuthu Gounder passed away 20 years before the presentation of the plaint. 10 years thereafter, Rama Gounder also passed away. Rama Gounder left behind his wife one Lakshmi, and four daughters namely, Chinnammal, Muniammal, Meenachi and Parameswari as his legal heirs. As the properties had not been divided amongst the legal heirs, post the death of Arumuga Gounder, Palanimuthu Gounder and Rama Gounder, the plaintiffs as the daughters of the Palanimuthu Gounder presented the suit for partition and separate possession.

4.Summons was sent to the defendants. Defendants 2 & 5 namely the legal heirs of the Rama Gounder entered appearance. They did not file written statement. The other defendants, though served, did not appear before the



Court. Since, the defendants 2 & 5 did not file their written statement, they were set *exparte*. With all the defendants having been set *exparte*, the stage was ready for *exparte* evidence. After recording the evidence on 16.07.2012, the Court granted a preliminary decree of partition on 23.07.2012.

5.In the mean time, pending the litigation, the civil revision petitioner purchased the property from the defendants by way of several sale deeds in Document Nos.1931/2011, 1151/2012, 1336/2011 and 3060/2014, all the documents registered at the Sub Registrar Office, Attur. The suit having been presented on 02.08.2010 and since, the plaintiff purchased the property from the defendants pending the litigation, she has to be treated only as an *lis pendens* purchaser.

6.The civil revision petitioner claimed that she should be impleaded as a party to the suit as well as in the final decree application. She filed an application to implead herself in the final decree application initiated by the plaintiff in I.A.No.181 of 2013. Her application to implead herself in the final decree application was allowed on 24.07.2015. Simultaneously, she took out applications to condone the delay in filing the application to set aside the



exparte preliminary decree and to set aside the *exparte* preliminary decree in I.A.SR.Nos.6711 of 2015 and 6712 of 2015. The said applications were returned on 01.02.2016.

7. Aggrieved by the order of return, the *lis pendens* purchaser preferred a revision before this Court in C.R.P.(NPD).Nos.1200 of 2016 & 1201 of 2016, seeking to set aside the order of return. This Court by an order dated 14.06.2016, permitted the civil revision petitioner to file an impleading application and represent the papers which were returned. It directed representation to be made within a period of two weeks from the date of receipt of a copy of that order. Accordingly, the petitioner filed a fresh application to implead herself in the suit and also took out applications and represented the applications in I.A.SR.Nos.6711 of 2015 & 6712 of 2015.

8. The learned Trial Judge in obedience to the directions of this Court, numbered the impleading application as I.A.No.921 of 2016. The respondent also filed a counter. After hearing both sides, the learned Judge proceeded to dismiss the petition on 17.10.2016. Hence, this revision.

9. I heard Mr.R.Ganesh Kumar for the civil revision petitioner.



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10.Mr.R.Ganesh Kumar pleads as follows:

(a)The petitioner is a bonafide purchaser of the property without notice of the pending suit and therefore, she is entitled to be impleaded in the proceedings.

(b)The preliminary decree passed by the Court in O.S.No.100 of 2010 deserves to be re-opened as the civil revision petitioner had not been heard prior to the passing of the order.

(c)On the face of the decree, he pleads that there is a fraud and collusion between the plaintiff and defendants 1 to 10, and therefore, the decree has to be ripped upon at the instance of an innocent purchaser of the property.

11.I have carefully considered the submissions of Mr.R.Ganesh Kumar.

12.The narration of the aforesaid facts shows that the suit is for partition and separate possession at the instance of the legal heirs of the deceased – owner of the property. The plaintiff is not a party to any of the sale deeds by which the civil revision petitioner purchased the property. The



civil revision petitioner, having purchased the property pending the litigation, is bound by the decree. This is as per Section 52 of the Transfer of Property Act, 1882. This Section does not prevent the alienation of property pending the litigation, but makes it clear that a purchaser of a property is bound by any decree that is passed in the suit. The vendors in the present case, are the defendants and they have suffered a preliminary decree on 23.07.2012. They have not taken any steps to set aside the *exparte* decree.

13.The right of a *lis pendens* purchaser is to implead herself in a final decree proceedings and seek for allotment of the property purchased by her in the name of her vendors, so that her title is crystallized and perfected. This is on account of the principle that equity should be worked out in all stages of a partition suit. A *lis pendens* purchaser cannot be given a right to rip open a preliminary decree, when her vendors themselves have not taken any steps. At the stage of preliminary decree, a Court declares the shares of each of the plaintiff and on payment of the appropriate Court fee, the share of the defendants also. In a final decree proceedings, the properties which are the subject matter of the suit are allotted as per the shares already declared by the Court under the preliminary decree. A Court dealing with final decree



application is bound by a preliminary decree and cannot go behind the preliminary decree.

14.The application to implead is certainly maintainable when a proceeding is pending. The suit having been decreed on 23.07.2012, it cannot be said to be pending, when the impleading application came to be filed on 11.07.2016. Therefore, on the ground of maintainability of the petition itself, the impleading petition is liable to be dismissed. Apart from this fact, as discussed above, a stranger purchaser of a joint family property pending the litigation, however, is bound by the decree that is passed against his / her vendors.

15.The right of the civil revision petitioner has been protected by virtue of her being impleaded in the final decree proceedings. She is always entitled to seek for the properties purchased by her to be allotted to her vendors. That right cannot be expanded to enable her to set aside the preliminary decree.

16.In the light of the above discussion, I do not find any reasons to take a different view than that has been taken by the learned Subordinate Judge,



Attur, in I.A.No.921 of 2016 in O.S.No.100 of 2010. The order passed by the learned Trial Judge stands confirmed. The learned Trial Judge is requested to expedite the final decree proceedings in I.A.No.181 of 2013. At that stage, the learned Trial Judge shall remember the observations that has been made in the order and if possible, allot the properties purchased by the civil revision petitioner in favour of the defendants from whom she derives title.

17.With the above observations, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

V.LAKSHMINARAYANAN, J.

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To



The Sub Court,
Attur.



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