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C.R.P.(NPD).No.47 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).No.47 of 2022 &
CMP.No.305 of 2022

Periyasamy

... Petitioner

-Versus-

1.M.Nallasamy

2.Krishnamoorthy

... Respondents

Civil Revision Petition under Section 115 of the Code of Civil Procedure to set aside the fair and final order dated 23.10.2021 made in I.A.No.1 of 2020 in O.S.No.187 of 2011 on the file of the District Munsif Court, Perundurai.

For Petitioner : *Mr.T.Murugamanickam,*
Senior Counsel,
for Mrs.D.Sathya

For Respondent 1 : *Mr.V.S.Kesavan*

ORDER

This civil revision petition has been filed by the first defendant in the suit. An application was presented by the plaintiff in I.A.No.1 of 2020 under Order XXIII, seeking permission of the court to withdraw the suit and file a fresh suit on the same cause of action.



2. For the sake of convenience, the parties will be referred to as per their

ranks in the suit.

3. The plaintiff originally filed O.S.No.187 of 2011 for the relief of a permanent injunction restraining the first defendant from interfering with the possession of the plaintiff.

4. The first defendant, on being served with summons, entered appearance in the suit. He brought to the notice of the court that he had filed a suit for partition in O.S.No.35 of 2003 on the file of the Principal Subordinate Judge at Erode. In this suit, the vendor of the plaintiff, viz., Krishnamoorthy was the defendant. The said suit for partition resulted in an exparte decree. In order to convert the exparte preliminary decree into an executable final decree, he filed an application in I.A.No.967 of 2007.

5. On being served with the notice in the final decree proceedings, the plaintiff's vendor, viz., the second respondent/second defendant, took out an application in I.A.No.465 of 2008 to condone the delay in filing an application to set aside the exparte preliminary decree. The said application was dismissed



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by the Trial Court in 2010. Pending the application to pass the final decree and the application to condone the delay in setting aside the exparte preliminary decree, the second defendant sold the property to the plaintiff. Therefore, the plaintiff is a *lis pendens* purchaser.

6. As against the dismissal of the application filed to condone the delay in preferring an application to set aside the exparte decree, a civil revision petition was preferred before this Court in CRP.No.349 of 2011. The said revision was also dismissed, and the matter has attained finality.

7. Pending these proceedings, the suit in O.S.No.35 of 2003 itself has been transferred from the file of the Principal Subordinate Judge at Erode to the file of the Subordinate Judge at Perundurai. The suit has been renumbered as O.S.No.522 of 2009 and the final decree application has been renumbered as I.A.No.447 of 2009.

8. Having been served with the written statement containing all these details in November 2011, an application was taken out in the year 2020 in I.A.No.2 of 2020 seeking an amendment of the plaint to include a prayer for



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declaration of title and an application in I.A.No.1 of 2020 seeking relief of withdrawal of the suit in O.S.No.187 of 2011 and to file a fresh suit on the same cause of action. The "formal defect" that has been pleaded is that the plaintiff should have filed a suit for declaration of title, and having presented a suit for bare injunction, he would claim that he is entitled to file a fresh suit on the same cause of action, withdrawing the existing suit. The said relief was granted by the learned Subordinate Judge at Perundurai.

9. Aggrieved by the same, the present revision has come before this Court.

10. Heard Mr.T.Murugamanickam for Mr.D.Sathya for the petitioner, and Mr.V.S.Kesavan for the respondents.

11. The narration of the aforesaid facts would go to show that the plaintiff/first respondent is a purchaser of the property *lis pendens*. The sale took place pending O.S.No.35 of 2003. As stated by Mr.T.Murugamanickam, O.S.No.35 of 2003 viz., the suit for partition is still pending. It has only been renumbered by virtue of bifurcation of territorial jurisdiction on the creation of a



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new Sub Court at Perundurai. The lis commences on the date of presentation of

the plaint in 2003. The purchase made by the plaintiff was on 24.11.2008.

12. Mr.V.S.Kesavan would argue that the purchase made by the plaintiff was without knowledge of the pendency of the proceedings. Unfortunately for his client, there is no question of bonafide purchase, when it comes to the matter of lis pendens. The *lis pendens* purchaser gets whatever share his vendor gets in the pending suit.

13. I have my own doubts, whether a suit for declaration of title is maintainable at the instance of the purchaser lis pendens.

14. Be that as it may, failure to sue for a declaration of title would not be treated as a formal defect in all cases. I need not go into that issue in the present case because the plaintiff is a purchaser *lis pendens*. As there is no formal defect in my view, the grant of the order by the learned Subordinate Judge in I.A.No.1 of 2020 permitting the plaintiff to withdraw the suit and to file a fresh suit on the same cause of action is unsustainable.



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15. In the light of the above, the order passed in I.A.No.1 of 2020 in O.S.No.187 of 2011 dated 23.10.2021 is set aside. O.S.No.187 of 2011 is restored to the file of the learned District Munsif at Perundurai. I make it clear that the plaintiff in the present suit is entitled to get himself impleaded in the suit in O.S.No.35 of 2003, now renumbered as O.S.No.522 of 2009 on the file of the learned Subordinate Judge at Perundurai and seeks for allotment of the property purchased by him in favour of his vendor and consequently in his favour.

16. With the above observation, this civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

29.04.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

The District Munsif Court, Perundurai.



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V.LAKSHMINARAYANAN, J.

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