



CRP.No.3861 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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S.Kumar

... Petitioner

Vs.

1.Datchayani

2.S.Shanmugham

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in IA.No.355 of 2016 in I.A.No.237 of 2012 in OS.No.448 of 2004 dated 04.11.2022 passed by the learned Additional District Munsif, Poonamallee and thereby allow the Civil Revision Petition.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.V.Suryanarayana Reddy for R1



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No appearance for R2

ORDER

This Civil Revision Petition has been filed challenging the order the passed in IA.No.355 of 2016 in I.A.No.237 of 2012 in OS.No.448 of 2004 on the file of the Additional District Munsif, Poonamallee, dated 04.11.2022, wherein the petitioner has filed a petition to implead him as party to the proceedings and the same was dismissed by the trial Court. Aggrieved by the said order, the present Civil Revision Petition is filed.

2. The petitioner is the third party to the suit and the first respondent is the second plaintiff and the second respondent is the defendant in the suit. According to the petitioner, who is the third party to the suit, the suit property was purchased by him from the defendant vide sale deed dated 27.06.2008. On and from the date of purchase itself, he is in peaceful possession and enjoyment of the suit property. The first respondent/plaintiff has filed a suit for partition as against the second respondent/defendant. The property purchased by the petitioner is also form part of the suit property.



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Therefore, he is also proper and necessary party in the said case and hence, he filed a petition before the trial Court to implead him as a party, which was dismissed.

3. According to the first respondent, the petitioner has filed this petition by colluding with second respondent in order to delay the proceedings and also with the intention to grab the property of the first respondent. The petitioner is not a proper and necessary party. Therefore, the petition is liable to be dismissed.

4. According to the second respondent, he had already sold the property to the petitioner for an extent of 0.20 cents. In fact total extent of the property is 0.46 cents out of which he is entitled to 0.23 cents in which he sold 0.20 cents to the petitioner through the sale deed dated 27.06.2008. Therefore, the suit property is not available for partition. Therefore, the petition is liable to be dismissed.

5. Before the trial Court, no oral or documentary evidence was



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adduced by either side. After careful perusal of records and hearing both sides, the trial Court dismissed the petition and held that the petitioner is neither proper nor necessary party. Aggrieved by the same, the present petition is filed.

6. The learned counsel for the petitioner would contend that the first respondent has filed the suit for the relief of partition and the suit was decreed. Thereafter, they filed a petition for passing of final decree in IA.No.237 of 2012 and the same is pending for passing of final decree. The petitioner purchased the property from the defendant to an extent of 0.20 cents out of 0.46 cents through the sale deed dated 27.06.2008. Since the petitioner purchased the property, he is a proper and necessary party. However, the trial Court failed to consider the same and dismissed the petition.

7. The learned counsel for the first respondent herein/2nd plaintiff filed written arguments and same was perused. According to the first respondent, they filed a suit for partition and the same was decreed and in the



main suit, the vendor of the petitioner/proposed party was set exparte. The petitioner purchased the property while pending suit. Already the vendor of the petitioner filed a petition to set aside the exparte decree and the same was dismissed. The first plaintiff during her life time had executed a Will dated 27.08.2001 in respect of her share in favour of first respondent/2nd plaintiff and she died on 28.06.2011. After her demise, the first respondent got allotted her share in the said property which is alleged to have been purchased by the petitioner. Therefore, the petitioner has no *local standi* to implead himself as a necessary party to the final decree application. Therefore, this petition is liable to be dismissed.

8. This Court heard both sides and perused the records.

9. In this case, the petitioner is the third party to the suit and the main suit was filed for partition and separate possession. According to the first respondent/second plaintiff, the property belongs to the first respondent/second plaintiff and the defendant/second respondent. During the pendency of the suit, the first plaintiff executed a Will in favour of the second



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plaintiff thereby the defendant is entitled to 1/3rd share. While so, the defendant sold 'B' Schedule property to an extent of 0.20 cents in which, the plaintiff has 2/3rd share of the property.

10. According to the petitioner, he purchased the property from the defendant, i.e., he has purchased 1/3rd share of the suit property, thereby he has to be implead as party in the final decree proceedings.

11. There is no dispute that the defendant has 1/3rd share of the property and he sold his share to the petitioner. The respondents have not denied the sale of 'B' schedule property to an extent of 0.20 cents in the name of the petitioner. Since the petitioner has purchased the property during pendency of the suit, the sale is hit by lis pendens. Though the petitioner purchased the property pending suit, he steps into the shoes of the defendant thereby he also has some interest and right over the suit property and hence, for complete adjudication his presence is essential at the time of passing of final decree. By allowing this petition no prejudice would be caused to the other side. The Trial Court failed to consider the same and hence, the order



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passed by the trial Court is liable to be set aside by allowing this petition.

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12. In the result, this Civil Revision Petition is allowed and the order passed by the trial Court in IA.No.355 of 2016 in IA.No.237 of 2012 in OS.No.448 of 2004 dated 04.11.2022 is set aside. No costs.

04.07.2024

Index : Yes / No
Internet : Yes / No
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To

The Additional District Munsif, Poonamallee.



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