



CRP No.4351 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.4351 of 2024
and CMP No.24224 of 2024

Shanthamani

.. Petitioner

-VS-

1. Mayangathal
2. Ramasamy
3. Eswaran
4. Vellingiri

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 03.07.2024 passed in I.A.No.5 of 2023 in O.S.No.139 of 2023 on the file of District Munsif cum Judicial Magistrate, Annur.

For Petitioner : Mr.K.Sudhakar

* * * * *



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ORDER

This civil revision petition arises against the order of the learned District Munsif cum Judicial Magistrate, Annur, in I.A.No.5 of 2023 in O.S.No.139 of 2023 dated 03.07.2024.

2. O.S.No.139 of 2023 was originally presented as O.S.No.140 of 2011 on the file of District Munsif Court at Avinashi. This is a suit for partition and separate possession. On being served with summons, the defendants filed a detailed written statement on 20.04.2012 and 30.04.2012. Even at that time, it was pleaded that the civil revision petitioner, Shanthamani, had sold the property to Mr.Vellingiri, much prior to the presentation of the suit. However, it was after the arguments were over in the suit that the plaintiff came forward with an application in I.A.No.5 of 2023 to implead the purchaser as a defendant in the suit.



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3. Notice was ordered in the application and a counter was received from the second defendant. Thereafter, the learned trial Judge proceeded to allow the application.

4. It is pertinent to point out that the Court had ordered notice to the proposed party, Mr.Vellingiri. He received the notice, but remained ex parte. As against the impleading of the fourth defendant, the second defendant is on revision.

5. Mr.K.Sudhakar argues that much water had flown after the defence was taken by the defendants on 30.04.2012. While reiterating the contentions taken by his counter-part in the trial Court, Mr.Sudhakar adds that the plaintiff was well aware about the sale even prior to the presentation of the plaint. Yet, she chose not to implead the purchaser and moving an application at the stage of arguments is not tenable.

6. I have considered the arguments of Mr.Sudhakar and have gone through the records.



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7. At the outset, I should point out that by allowing the impleading application, the person who is aggrieved is the fourth respondent, Mr.Velliangiri. Mr.Velliangiri had not opposed the impleading application before the trial Court. He has also not preferred a revision to this Court. It is only the second defendant, the vendor of the fourth respondent, has preferred this revision.

8. The purchaser of a property, in a suit for partition, would be a necessary and proper party. This is because at the time of passing of the preliminary decree, when the Court declares the share of the parties, in case there has been a sale, the purchaser, at the time of final decree, can always plead for equity and seek for allotment of the property purchased by him through his vendor so that he can crystallize his right over the property. It is on this basis that a purchaser of a joint family property is always impleaded. It can be at any stage of the proceedings including second appellate stage. The question of bonafides of the purchaser will not arise since if the second defendant has a share, automatically the said share will get allotted to the fourth defendant.



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9. Furthermore, Articles 58 and 59 of the Limitation Act, which is pleaded by Mr.Sudhakar, are also inapplicable to the case. Article 58 applies to suits for declaration and Article 59 deals with deeds of cancellation. When the plaintiff pleads that she is not a party to the sale executed by the second defendant in favour of the fourth defendant, any transaction, inter se, between those defendants will obviously not be binding on the plaintiff. Hence, both the Articles are inapplicable. Being a suit for partition and since the purchaser is a proper and necessary party, I am not inclined to admit the revision.

The civil revision petition is, accordingly, dismissed. No costs. Consequently, C.M.P.No.24224 of 2024 is also dismissed.

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Index : Yes/No
Neutral Citation : Yes/No
sra

To

The District Munsif cum Judicial Magistrate,
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V.LAKSHMINARAYANAN, J.

(sra)

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