



WEB COPY



C.R.P.(PD)No.4565 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4565 of 2024
and CMP No.25415 of 2024

G.V.Subburaj

... Petitioner

VS

1. Sujatha B.Pankaj
2. Vidya
3. Annapoorna
4. Tamil Nadu Industrial Investment Corporation,
Thiruvallur Branch, Rep. by its Branch Manager,
No.86, II Main Road, Ambattur Industrial Estate,
Chennai-58.

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 13.09.2024 in I.A.No.2 of 2023 in O.S.No.6 of 2011 on the file of II Additional District and Sessions Judge, Thiruvallur at Poonamallee.

For Petitioner : Mr.S.Mukund
Senior Counsel
for Mr.N.K.Ponraj



C.R.P.(PD)No.4565 of 2024

WEB COPY

ORDER

This Civil Revision Petition arises against the order of the II Additional District and Sessions Judge, Thiruvallur at Poonamallee in I.A.No.2 of 2023 in O.S.No.6 of 2011 dated 13.09.2024.

2. The civil revision petitioner is the fourth defendant in O.S.No.6 of 2011. O.S.No.6 of 2011 is a suit presented for partition and separate possession. The case of the plaintiff is that Tamil Nadu Small Industrial Development Corporation had alienated the suit schedule mentioned property in favour of Krishnaswamy, father of the plaintiff and the 1st and 2nd defendants.

3. The said Krishnaswamy was enjoying the property till his death on 20.06.1987. Therefore, a sale deed was executed in the name of Shyamala, their mother. Thereafter, his wife Shyamala took possession of the property and was enjoying the same. She passed away on 14.08.1991. Thereafter, one Vidya started enjoying the property and was running the business on her behalf and on



C.R.P.(PD)No.4565 of 2024

behalf of the plaintiff and the second defendant.

WEB COPY

4. On 17.01.2005, the plaintiff came to know that the suit schedule mentioned property is going to be alienated by Tamil Nadu Industrial Investment Corporation. Hence they presented a suit in O.S.No.68 of 2005 seeking for permanent injunction and other reliefs. It is not in dispute that the suit has been decreed *exparte*.

5. In the meantime, the civil revision petitioner had purchased the property in the sale held by Tamil Nadu Industrial Investment Corporation. Therefore, the first respondent presented a suit in O.S.No.,6 of 2011 seeking for the aforesaid reliefs. Pleadings have been completed and the matter has to be taken up for trial. At that stage, the fourth defendant had filed an application for rejection of plaint.

6. He pleaded that the suit is barred by virtue of the State Financial Corporation Act, 1951 and also it is hit by Limitation since the suit has not been presented within three years from the date of sale. After receipt of a



C.R.P.(PD)No.4565 of 2024

counter from the plaintiff, the learned II Additional District and Sessions Judge,

Poonamallee dismissed the application. Hence this revision.

7. I heard Mr.S.Mukund for Mr.N.K.Ponraj.

8. Mr.S.Mukund urged that the suit for partition is not maintainable by virtue of the special provisions under Section 32 of the State Financial Corporation Act, 1951. He pleads that by virtue of Section 32(9), in case any person who is aggrieved by the action taken by the Principal District Judge to alienate the property, the appropriate remedy is only to file an appeal to High Court and a suit for partition is not maintainable. He further urges that as the plaintiff was aware of the sale as early as in 2005 and since the suit for partition filed in the year 2011 is barred by time.

9. I have carefully considered the submissions of Mr.Mukund and gone through the records.

10. The facts are not in dispute. The owner of the property was one



C.R.P.(PD)No.4565 of 2024

WEB CRYM Krishnaswamy. He had purchased the property in the year 1987. He died intestate. He left behind as his legal heirs his wife Shyamala and three daughters, viz., Sujatha, Vidya and Annapoorna. On account of the Hindu Succession Act, on his death, partition opened and each of the Class-I heirs will be entitled to 1/4th share. His wife Shyamala passed away in the year 1991. Her share would again vest with her legal heirs viz., the three daughters. Therefore, their shares blossomed from 1/4th to 1/3rd.

11. It is the case of all the parties that the first defendant, Vidya, had mortgaged the property in favour of the third defendant/Tamil Nadu Industrial Investment Corporation. Since there was a default, the property was brought for sale invoking Section 29 of the State Financial Corporation Act. In the auction held, pursuant to the said notice, the property was purchased by the fourth defendant. Pleading that the share which has been purchased by the fourth defendant is only a fractional share, the plaintiff has filed a suit for partition.

12. At the outset, I should point out that being an application for rejection of the plaint, I must take the averments made in the plaint be true.



C.R.P.(PD)No.4565 of 2024

Unless and until the law specifically bars, the presentation of such a suit, the suit is entitled to remain on the file of the court and proceed for trial.

13. Mr.Mukund's argument that Section 32 of the State Financial Corporation Act bars a suit for partition is a quite tantalizing. He contends that under Section 32(ix), if a property had been sold invoking State Financial Corporation Act, it could only set aside by an order passed by the High Court on an appeal preferred by any aggrieved person.

14. Sections 29, 30, 31 and 32 are an exception to the normal rule of bringing a mortgaged property for sale through a civil court. The Act has created an alternate mechanism for the State Financial Corporations to recover its dues by bringing the property for sale. Under Section 32, the District Judge is entitled to direct the sale of the property which is the subject matter of security with the State Financial Corporation. This is clear from Section 32 (7). Therefore, one has to see whether the Court is entitled to sell a share of a person, who has not mortgaged the property or created a security, with the State Financial Corporation. It is too fundamental, but I have to reiterate that a



C.R.P.(PD)No.4565 of 2024

Court auction sale does not have warranty of title. What the Court orders to be sold is the right of the judgment debtor to the property.

15. The first defendant, having created a mortgage in favour of the third defendant, could have only mortgaged her share of the property. No person who has succeeded to the estate by virtue of the succession, having opened on the death of his/her parents, can mortgage the interest of the other co-heirs in favour of third party. Therefore, what was sold by the learned Judge under Section 32(7) was the share of the first defendant. Such a sale will obviously not bind the share of the other co-heirs.

16. Section 32(9) deals with a situation where an order is passed under Sections 32(4)(a), 32(5) and 32(7) of the said legalisation. There is no mechanism under the State Financial Corporation Act to deal with the rights of third parties while bringing the property for sale. To put it simply, a District Judge exercising the powers under Section 32 of the Act does not have the power to grant a decree for partition. Unless and until this power is explicitly conferred on the District Judge under the Act, it would not operate as a bar for



C.R.P.(PD)No.4565 of 2024

filing a fresh suit for partition.

WEB COPY

17. The Act also does not bar the jurisdiction of the civil court in case a fractional share is sold and purchased, as in the present case. That being the situation, the question of holding that the State Financial Corporation Act is a bar for a suit for partition does not arise.

18. The second plea is that the suit is barred by virtue of the Limitation Act. The Supreme Court in *N.Thajudeen vs Tamil Nadu Khadi and Village Industries Board* 2024 SCC Online SC 3037 has held that no suit claiming a right over the property is barred as long as the right to the property exists. Neither the plaintiff nor the second defendant had mortgaged or sold their interest in favour of the third defendant. That being the situation, their rights cannot be held to have been extinguished.

19. Further more, Article 59 of the Limitation Act would apply only if the person who seeks for cancellation is a party to the document. The co-owner of the property can ignore the sale that has taken place at the instance of



C.R.P.(PD)No.4565 of 2024

the other co-heir and present a suit for partition. In fact, the mere creation of the mortgage does not by itself give a cause of action for the plaintiff to present the suit. In ***Kandasami Pillai and Ors vs Munisami Mudaliar and Ors AIR 1932 Madras 589*** , a Division Bench of this Court has held that the right of a trustee to present a suit to avoid a mortgage created over the trust property does not arise even on the date of registration of the mortgage but arises only when the said mortgage is enforced.

20. Further more, in a suit for partition, the cause of action to present the suit arises *de die in diem*. The sale had been made in the year 2005. Having purchased a share of a co-owner, it is for the fourth defendant to plead ouster. For ouster to be applicable against a co-owner, the period of limitation is 12 years under Articles 64 and 65 of the Limitation Act. This suit having been filed in 2011 within six years of the alienation, I am not in a position to accept Mr.Mukund's plea to hold that the suit is barred.

21. In the light of the above discussions, I am constrained to confirm the order of the learned II Additional District and Sessions Judge, Thiruvallur at



C.R.P.(PD)No.4565 of 2024

Poonamallee. The civil revision petition is dismissed. No costs.

WEB COPY

22. The learned II Additional District and Sessions Judge, Poonamallee is requested to take note of the fact that the suit is pending from 2011. He is requested to expedite the proceedings at all stages and dispose it of within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

sr

To

The II Additional District and Sessions Judge,
Thiruvallur at Poonamallee..



WEB COPY



C.R.P.(PD)No.4565 of 2024

V.LAKSHMINARAYANAN,J.,

SI

CRP.(PD)No.4565 of 2024

18.11.2024