



C.R.P.(MD).No.307 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.07.2024

DELIVERED ON: 10 .07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).No.307 of 2019
and CMP(MD).No.1476 of 2019**

Jude Prathap

....Petitioner/Petitioner

Vs

1.Bavani Rani

2.P.Ramsankar

3.P.Ramapandi

4.P.Sundarvanam

5.Kanjanadevi (died)

6.P.Raveendran

7.P.Sudhakar

...Respondents 1 to 7
/Respondents 1 to 7

8.Periyasamy Nadar

9.P.Sathiyaseelan

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10.P.Ramesh

11.Navaneethan

12.Jeyanth Kannan

....Respondents 8 to 10
/Respondents 8 to 10

(Respondents 11 and 12 are brought on record as legal heirs of the deceased 5th respondent vide Court order dated 21.06.2024)

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.519 of 2017 in O.S.No.339 of 2017 dated 12.10.2018 on the file of the Subordinate Court, Tiruchendur and set aside the same by allowing this Civil Revision Petition.

For Petitioner :Mr.V.Raghavachari
Senior Counsel
For M/s.D.Srinivasa Ragavan

For R1 to R4, R6,
R11 & R12 : Mr.S.Parthasarathy
Senior Counsel
For Mr.M.P.Senthil

R5 : Died

For R7 : Mr.J.Suresh Kumar

For R9 : No appearance



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ORDER

The present civil revision petition has been filed by a third party to O.S.No.399 of 2017 on the file of the Subordinate Court, Tiruchendur challenging the dismissal of his application to implead himself in the suit as a party defendant.

(A)Facts leading to the filing of this revision petition are as follows:

2.The respondents 1 to 7 herein as plaintiffs had filed the above said suit on 23.07.2013 as against the respondents 8 to 10 in the revision petition for the relief of partition of their 7/10th share and separate possession. They have further prayed for the relief of permanent injunction as against the first defendant and his men from in any encumbering the suit schedule properties are allotted to the share of the plaintiffs.

3.Along with the suit, the plaintiffs had filed I.A.No.637 of 2013 seeking interim injunction as against the first defendant and his men and agents from in any way encumbering the suit schedule properties. An order of exparte injunction was granted on 23.07.2013 till 07.08.2013. Since summons were not served upon the first defendant, a fresh notice was ordered on 07.08.2013 and the injunction application was adjourned to



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21.08.2013 after extending the injunction order. On 21.08.2013, again a fresh notice was issued to the first respondent and after extending the injunction order, it was adjourned to 11.09.2013. On 11.09.2013, again a fresh notice was ordered to the first defendant and after extending the injunction order, it was adjourned to 19.09.2013.

4. On 19.09.2013, the injunction order was extended till 23.10.2013. On 23.10.2013, it was adjourned to 13.11.2013 for substituted service batta for the first defendant. On 13.11.2013 batta was paid for R1 and thereafter, it was adjourned to 14.11.2013 without extending the injunction order. On 27.11.2013, the first defendant in the suit had sold the suit schedule properties to the revision petitioner/proposed party. The purchaser had filed I.A.No.519 of 2017 on 13.12.2017 to implead himself in the said suit as a party defendant. The said application was dismissed by the trial Court on the following grounds:

(a) The proposed party has not purchased the entire plaint schedule properties from the first defendant and therefore, he is not a necessary party.

(b) When an order of interim injunction not to encumber the property was operating as against the first



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defendant, in violation of the said order, the proposed party had purchased the suit schedule properties. Therefore, he is not a necessary party.

(c)The suit for partition has been filed on 23.07.2013 and the proposed party had purchased the suit schedule property from the first defendant on 27.11.2013. Therefore, the proposed party being a pendente lite purchaser is not entitled to get himself impleaded in the suit.

(d)The fifth plaintiff had passed away on 15.07.2015. Without impleading the legal heirs of the fifth plaintiff, the present application has been filed in I.A.No. 519 of 2017. Therefore, the impleading application is liable to be dismissed.

(e)The suit properties now sold by the first defendant may also be allotted to the share of the first defendant in the partition suit. Therefore, the presence of the petitioner is not essential for deciding the issues involved in the suit.



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5.Challenging the dismissal of the above said impleading application, the present revision petition has been filed by the proposed party to the above said suit.

(B)Contentions of the learned Senior Counsel appearing for the revision petitioner are as follows:

6.The fourth plaintiff in the suit has lodged a complaint before the Superintendent of Police, Tuticorin on 15.07.2013 alleging that his father R.Periasamy (D1) is missing for the past 10 days and the documents relating to their ancestral properties are also missing. He had alleged that some of his relatives have abducted him. The fourth plaintiff in the suit had filed H.C.P.No.800 of 2013 for production of his father. The first defendant in the suit who was the alleged detenu in the Habeas Corpus Petition was produced before this Court on 01.08.2013 wherein he had stated that only because of the fourth plaintiff in the suit, he is residing away with his relatives for his survival. Therefore, when the first defendant is missing from 05.07.2013, the sons have clandestinely filed the suit and obtained an order of exparte interim injunction knowing fully well that his father is not available in the said address. The interim injunction was also not served upon him. Therefore, alienation effected by



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the first defendant on 27.11.2013 are not in violation of the injunction order.

7.The learned Senior Counsel had further contended that the first defendant had filed I.A.No.84 of 2014 to set aside the exparte order in the suit and it was allowed. Thereafter, he had filed a written statement. The suit has been transferred to Subordinate Court, Tuticorin and renumbered as O.S.No.178 of 2016. Again, it was transferred to Sub Court, Srivaikundam and renumbered as O.S.No.180 of 2023. When the revision petition was pending before this Court, the trial Court has proceeded to pass a preliminary decree in the partition suit on 03.04.2024 without awaiting for the orders of this Court.

8.The learned Senior Counsel had further contended that in a suit for partition, even a purchaser pendente lite is a necessary party to the proceedings and hence the trial Court was not right in dismissing the said application. After alienating the property, the first defendant may not evince any interest and therefore, his presence in the suit is very much essential for proper adjudication of the rights of the parties. Otherwise, the purchaser's right could not be protected. Hence, he prayed for allowing the revision petition.



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(C)Contentions of the learned Senior Counsel appearing for

the respondents are as follows:

9.The sale in favour of the proposed party has been effected on 27.11.2013 in violation of the interim injunction order of the Court dated 23.07.2013. Any indulgence shown to the proposed purchaser would result in perpetuating illegality.

10.The learned Senior Counsel had further contended that the sale deed has been executed in a fraudulent manner in order to defraud the plaintiff in the suit. It is not known whether the consideration was paid to the first defendant. In fact, the first defendant was in the custody of some of his relatives and they have influenced the first defendant to execute the sale deed. Therefore, the proposed party is a beneficiary of the fraudulent sale deed and hence, he is not entitled to get himself impleaded.

11.Any alienation made in violation of the injunction order would only be void in the eye of law. No cause of action would arise on the basis of a fraudulent transaction or transgression of law.

12.The trial Court had exercised its discretionary power after having analysing all facts and circumstances of the case. This Court may



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not interfere in the said discretionary orders unless it finds the order to be perverse.

13.Immediately after granting of interim injunction, an objection letter has been circulated to the concerned registrar office not to register any document that is likely to be presented by the first defendant. In order to get over the said objection letter, the proposed purchaser has chosen a different registrar office by including a fictitious property within the said jurisdiction. Therefore, the sale deed itself is a fraud on registration and therefore, the beneficiary of the said document cannot get implead himself in the suit.

14.The learned Senior Counsel had further contended that the proposed party is beneficiary of clandestine transaction made by the owner of the property in violation of the restrain order passed by the Court. Therefore, he is not entitled to get implead himself. Hence, he prayed for dismissal of the revision petition.

15.The learned Senior Counsel for the respondents had relief upon the judgment of the Hon'ble Supreme Court reported in **(1996) 5 SCC 539 (Sarvinder Singh Vs. Dalip Singh and others)** paragraph No.6, **(1996) 1 MLJ 33 (Surjit and others Vs. Harbans Singh and others etc.)**



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paragraph No.4, (2004) 1 SCC 191 (*Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and another*) paragraph No.9, (2012) 8 SCC 384 (*Vidur Impex and Traders Private Limited and others Vs. Tosh Apartments Private Limited and others*) paragraph No.41.6 and the judgment of the Hon'ble Supreme Court in Civil Appeal No.2991 of 2024 dated 30.05.2024 reported in **2024 INNSC 377**.

16.I have considered the submissions made on either side and perused the material records.

(D).Discussion:

17.The fourth plaintiff in the suit had lodged a police complaint to the Superintendent of Police, Tuticorin on 16.07.2013 alleging that his father namely the first defendant is missing for the past 10 days that is from 05.07.2013. The suit for partition has been filed on 23.07.2013 and an order of interim injunction restraining the first defendant from alienation or encumbering the property has been granted on the same day. It could be seen from 'B' diary extract that paper publication for effecting substituted service on the first respondent was ordered on 14.11.2013 with a direction to effect paper publication on or before 10.12.2013. Admittedly, the paper publication has been effected only on 04.12.2013. Therefore, this



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Court has to construe that only on 04.12.2013 the first defendant had any knowledge about the suit or injunction order passed against him.

18.The first defendant has been set exparte on 16.12.2013 and the first defendant had filed I.A.No.84 of 2014 on 07.01.2014 to set aside the exparte order as against him alleging that he came to know about the suit proceedings only through paper publication made on 04.12.2013. This application has been allowed by the trial Court on 20.02.2014. Even as per the case of the plaintiffs, their father was missing from 05.07.2013 onwards. Therefore, it is clear that the first defendant was not available in the address shown in the plaint on the date of granting of interim injunction order and he came to know about the same only on 04.12.2013. The first defendant has effected sale in favour of the proposed party on 27.11.2013 itself.

19.The trial Court had not extended the interim injunction order beyond 13.11.2013. The sale has been effected on 27.11.2013. Therefore, it is clear that the sale deed was executed by the first defendant without having any knowledge about the injunction application, but after interim injunction order had expired.



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20. Even assuming that the first defendant is not the owner of the entire suit schedule property as he is a co-owner, he is entitled to alienate to the extent of his share. The Hon'ble Supreme Court in a judgment reported in **(2010) 14 SCC 370 (T.G.Ashok Kumar Vs. Govindammal and another)** in paragraph No.15 has held as follows:

“15..... Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred pendente lite, to the share of the transferor, so that the bonafide transferee's right and title are saved fully or partially.”

21. In view of the judgment of the Hon'ble Supreme Court, it is clear that the pendente lite purchaser from the co-owner pending partition suit will be a proper party for adjudication of his rights.

22. The Hon'ble Supreme Court in a judgment reported in **(2017) 7 SCC 342 (T.Ravi and another Vs. B.Chinna Narasimha and others)** has held that the pendente lite sale does not render sale void, but only makes it subject to final decision in the suit.



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23. In the present case, as referred to supra, the injunction interim order was not extended after 23.10.2013. Therefore, the sale effected on 27.11.2013 cannot be considered to be a sale in violation of the order of the injunction. In such circumstances, the sale effect on 27.11.2013 cannot be considered to be void but only subject to the final out come of the partition suit.

24. When the sale is valid and subject to the out come of the suit, the pendente lite purchaser from a co-owner (as per the case of the plaintiffs) is certainly a proper party to the proceedings. In such circumstances, the trial Court was not right in holding that the sale has been effected in violation of the injunction order and the purchaser being pendente lite not entitled to get impleaded himself in the suit.

25. The trial Court had dismissed the impleading application on the ground that the proposed party has not chosen to implead the legal heirs of the 5th plaintiff/5th respondent in the impleading application. As rightly pointed by the learned counsel for the revision petitioner, the 5th plaintiff had passed away on 15.07.2015. However, the other plaintiffs have not chosen to implead the legal heirs of their co-plaintiff till the disposal of the impleading application. In such circumstances, the trial



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Court was not right in dismissing the impleading application on the said ground. Pending revision petition, the legal heirs of the 5th respondent in the revision (Kanjanadevi) have been impleaded before this Court.

26.When the revision petition as against the dismissal of the impleading application is pending, the trial Court has proceeded to pass a preliminary decree on 03.04.2024. The Hon'ble Supreme Court in a judgment reported in **2007 (3) CTC 332 (Dhanalakshmi & others Vs. P.Mohan & others)** while allowing an impleading application by pendente lite purchaser, in a partition suit, had set aside the preliminary decree on the ground that such a decree cannot stand in the absence of the proposed party.

27.This Court has arrived at a finding that the revision petitioner is a necessary and proper party to the partition suit. In exercise of jurisdiction under Article 227 of the Constitution of India, the preliminary decree dated 03.04.2024 is hereby set aside. The order dated 12.10.2018 made in I.A.No.519 of 2017 is hereby set aside and the proposed party herein is directed to be impleaded as a party defendant in the suit. The trial Court is directed to dispose of the suit on merits and in accordance with



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law without being influenced by any one of the observations made by this Court after giving due opportunity to all the parties.

28. With the above said deliberations, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Subordinate Judge, Tiruchendur

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Subordinate Judge, Srivaikundam

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R.VIJAYAKUMAR, J

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Pre-delivery order made in

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