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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.11.2024

PRONOUNCED ON : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)Nos.878 and 879 of 2020

and

C.M.P.(MD)No.5816 of 2020

S.Mathalaikumar

... Petitioner in both petitions

vs.

- 1.S.Sakthivelrajan
- 2.S.Natarajan
- 3.S.K.Seematti
- 4.K.Kesavaraja
- 5.Mathalaivani
- 6.S.M.Sivaram Kumar
- 7.S.Sundarrajan
- 8.S.N.Mathalai Rajan
- 9.Jayaganesh Rajan
- 10.N.Senthilmuruges Rajan
- 11.S.Jayalakshmi
- 12.N.Kanagambal
- 13.S.Revathy
- 14.S.Meenatchi
- 15.M.Thanuja
- 16.S.Bama
- 17.Ram Prasad
- 18.Vignesh Babu



19.Yamini Premkumar

20.Prakashbabu

21.Minor Krishna Prasad

22.Minor Rushika Deepthi

...Respondents in both petitions

(Minors 21 and 22 are represented by their father and guardian, Respondent No. 20)

COMMON PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decretal order, dated 27.07.2020 passed in I.A.Nos.22 of 2018 and 30 of 2019 in O.S.No.41 of 2016 on the file of the Additional District and Sessions Court, Theni @ Periyakulam.

For Petitioner :S.Kadarkarai

For R1 to R4, R11

and R15 :Mr.Venkatesan

Senior Counsel

for Mr.S.Vellaichamy

For R5 to R10,

R12 to R14 and R16:No appearance

(in both petitions)

COMMON ORDER

Both the Civil Revision Petitions have been filed challenging the order passed in I.A.Nos.22 of 2018 and 30 of 2019 in O.S.No.41 of 2015, dated 27.07.2020, by the learned Additional District and Sessions Judge, Theni @ Periyakulam.



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2.The petitioner is the plaintiff in O.S.No.41 of 2015 on the file of the Additional District and Sessions Court, Theni @ Periyakulam. The suit was filed for partition and for other reliefs. The petitioner/plaintiff and the respondents 1 to 16 are family members and the respondents 17 to 22 are subsequent purchasers. The petitioner contended that there are 64 properties, which belong to the petitioner/plaintiff and the respondents/defendants 1 to 16. In the course of the trial, the plaintiff came to know that the property, which is now pleaded to be included as Item No.65, has been purchased by the 11th defendant, Swathyrekha, wife of 10th defendant and Karthika, wife of 4th defendant, by way of a registered sale deed, dated 14.09.2016. Hence, the petitioner filed an application in I.A.No. 22 of 2018 to include the property purchased by the 11th defendant, Swathyrekha, wife of 10th defendant and Karthika, wife of 4th defendant, as Item No.65 in the suit schedule property.

3.The defendants had filed their counter affidavit stating that the properties purchased, as alleged by the plaintiff, by the 11th defendant, 15th defendant, wife of 4th defendant and the wife of 10th defendant, out of the income derived from the firms, Seema Dharma Industries and Karthick Sulphate. The next contention in



the counter affidavit is that on 30.01.2017 itself, the petitioner/plaintiff was aware that the said property was purchased by them, however, the application under Order 6 Rule 17 r/w Section 151 CPC to include the property is belated and such application is not maintainable. The next contention is that the plaintiff has not added all the parties to the sale deed and hence, the application is hit by doctrine of non joinder of necessary parties.

4.Hence, the petitioner/plaintiff filed an application in I.A.No.30 of 2019 to implead, Swathy Rekha, wife of 10th defendant and Karthika, wife of 4th defendant, as defendants 23 and 24 in the suit. The defendants 1 to 4 filed their written statement and disputing the contents in I.A.No.30 of 2019. However, the defendants 6, 14 and 16 filed their counter affidavit showing their non objection to allow the said petition.

5.The trial Court in I.A.No.22 of 2018, by order, dated 27.07.2020, held that the property, which was purchased by the 11th defendant, 15th defendant, wife of 4th defendant and the wife of 10th defendant, was out of their personal capacity from the incomes derived as partners in the partnership firms, namely, Seema



Dharma Industries and Karthick Sulphate and the property, which stood in the name of the female, cannot be included in the properties of a joint family. On the above said reasons, the trial Court had dismissed the application filed by the plaintiff in I.A.No.22 of 2018.

6. Similarly, the trial Court in I.A.No.30 of 2018, by order, dated 27.07.2020 had held that the plaintiff has filed the application belatedly, after the filing of the written statement by the defendants and the plaintiff has not produced any valid documents to prove that the said property was purchased by them out of the family income and hence, merely considering the sale deed, the Court cannot pass any orders. On the aforesaid reasons, the trial Court had dismissed the said application.

7. Challenging the orders passed in I.A.No.22 of 2018 and I.A.No.30 of 2019 in O.S.No.41 of 2015 by the learned Additional District and Sessions Judge, Theni @ Periyakulam, the above Civil Revision Petitions have been filed by the plaintiff.



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8.The learned Counsel for the petitioner/plaintiff contended that during the course of the trial, they came to know that the 11th defendant, 15th defendant, wife of 4th defendant and the wife of 10th defendant has purchased the property on 14.09.2016, which has been situated in between the family properties, which is the subject matter of the partition suit referred as I.Nos.1 to 64. The present property, which has to be included as I.No.65, is a property purchased by the wife of 10th respondent and the wife of 4th respondent, who are now sought to be arrayed as defendants 23 and 24. The learned Counsel further contended that the trial Court has power under Order 1 Rule 10(2) CPC to add or remove a party to the suit, if the Court feels that the parties are necessary, then it can add or remove the parties in the interest of justice.

9.The learned Counsel for the petitioner relied upon the following judgments in support of his contentions:

(1)The Hon'ble Supreme Court in Civil Appeal No.4177 of 2024 between ***SK.Golam Lalchand vs Nandulal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes and others***, dated 10.09.2024, had held as follows:



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“16. Even the claim of the defendant-appellant S.K. Golam Lalchand or Brij Mohan to the suit property on the basis of the family settlement has not been proved. The settlement has not been adduced in evidence. Therefore, by no stretch of imagination, it can be said that Brij Mohan had acquired exclusive right in the entire property acquired and possessed by late Salik Ram and late Sita Ram by virtue of the sale deed 1959 Exh.1.”

(2)The Hon'ble Supreme Court in Civil Appeal No.7305 of 2024 between

Yogesh Goyanka vs Govind and others, dated 10.07.2024, held as follows:

“20. In the particular facts and circumstances of this case, Mr. Sundaram has been able to satisfy this Court on the possibility of collusion between the Respondents. It is a fact that the Plaintiffs and Defendants are relatives. More importantly, Plaintiffs approached the court in the Underlying Suit after a substantial delay of 11 years whereas admittedly, the revenue records were mutated to reflect the name of Respondent No. 21 since 2007. It is also curious that the claim of non-payment of consideration by the Appellant was made for the first time before this Court.

21. On the other hand, the Appellant has a registered sale deed in his favor and has therefore seemingly acquired an interest in the Subject Land. Whether or not the consideration was paid, is a disputed question of fact that shall be determined by the Trial Court. Therefore, in the considered opinion of this Court, considering the totality of the circumstances in this case, including the fact that the trial has not progressed significantly, the Appellant herein, in the interest of justice, is entitled to impleadment in the Underlying Suit in order to protect his interests, if any, in the Subject Land.”



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(3) This Court in ***C.R.P.(MD)No.307 of 2019*** between ***Jude Prathap vs Bavani Rani and others***, dated 10.07.2024, held as follows:

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

(4) This Court in ***2019 (1) CTC 82*** between ***JB.T.Munichikkanna Reddy and others vs Siddappa Reddy***, held as follows:

“8. Order 1 Rule 10 of CPC enables the Court to add any person as a party at any stage of the proceedings, if a person whose presence in Court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. If the Court is satisfied that it is necessary for the determination of the real matter in controversy to substitute the party in the suit, it can be done under Order 1 Rule 10 CPC. When the court



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finds that in the absence of the persons sought to be impleaded as party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the court would do justice by impleading such persons. Order 1 Rule 10(2) of the code gives wide discretion of court to deal with such a situation which may result in prejudicing the interest of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit. Under Order 1 Rule 10(2) CPC even without an application the court may at any stage add or strike out the parties to the suit. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule 10 CPC speaks about judicial discretion of the court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined or it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The court under Order 1 Rule 10(2) will of course act according to reason and fair play and not according to whims and caprice. Hypertechnical approach which may result in the miscarriage of justice cannot be adopted while deciding an application under Order 1 Rule 10 CPC.”

(5)This Court in **S.A.No.609 of 2019**, dated 10.07.2024 between

Ranganayaki vs Saraswathy @ Palaniammal and others, held as follows:

“19. Going through the grounds of appeal, I find that the ground of nonimpleading of the third party has been set forth as a ground in the Second Appeal grounds. No doubt, the specific I.A.number dismissing the impleading petition has not been mentioned, but a ground has been set forth to dispute the same. Apart from that, a question of law had also been suggested to that effect. This I find is, sufficient compliance in terms of Section 105(1) and I would reject the argument of Mr.Karthik Ranganathan that since no revision or appeal had been presented as against the order passed by the learned V Additional District Judge, Coimbatore in I.A.No.812 of 2013, impleading cannot be raised for the first time in Second Appeal. In fact, this argument pales into insignificance by virtue of the orders passed by this Court in C.M.P.No.



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557 of 2020 dated 10.03.2023 and C.M.P.No.3250 of 2024 dated 05.03.2024.

20. By the effect of the orders I have referred to above, this Court has impleaded the subsequent purchasers as parties to the litigation. I have to hold that the Courts below have correctly come to the conclusion that the nonimpleading of the subsequent purchasers is fatal to the suit. However, it is not a suit for declaration of title or such other reliefs, but it is a suit for partition. In a suit for partition, when the plaintiff comes up with an application to implead the subsequent purchaser, the application should normally be allowed. This is because the subsequent purchaser only gets the right, title and interest as alienated by a co-parcener / co-sharer. He does not have any independent right over the property.”

(6)This Court in **S.A.No.1419 of 2013**, dated 20.02.2024 between

Sowbakkiam Ammal and another vs Gunasekaran, held as follows:

“24. Turning to the point of Section 19 of the Specific Relief Act that has been pleaded by Mr.Rajaraman, it is an interesting plea, but without any basis. Section 19 operates in case a person has purchased the property without due notice of the agreement 'prior to the presentation of the plaint' . Once the purchase takes place after the presentation of the plaint, Section 52 is attracted. The plane in which Section 52 operates is fundamentally different from the one under Section 19. Lis pendens does not know of a bonafide purchase. A person who purchases the property gets whatever is the result of the decree. In this particular case, since the plaintiff has purchased the property pending the lis in O.S.No.142 of 2004 from the legal heirs of Vijayaramareddiar, he gets what the defendants in that suit would have obtained. The defendants in that suit only suffered a judgment of specific performance and faced the ignominy of delivery of possession through process of Court. Therefore, the plaintiff in the present suit would be bound by the decree in O.S.No.142 of 2004 on the file of the II Additional District Munsif and cannot take a plea of Section 19. This issue has been specifically dealt with in number of cases.

25.Mr.Rajaraman would then refer to the judgment in *M.P.Kanoi and Four Others -Vs- Palani, Prop, M.P.Builders* (2001(3) CTC 452) to



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argue that this Court has recognized that Section 19 would apply even for a person who has purchased the property lis pendens. A careful persual of the judgment, especially para 12, would show that this Court had not laid down such a proposition as canvassed by Mr.Rajarajan. On the contrary, that was a case where the applicants who were third parties to the suit for specific performance had taken a plea that even before the suit had been presented, they had entered into registered sale deeds and therefore they were proper and necessary parties to the suit. The law according to me is this, where Section 52 of the Transfer of Property Act applies, Section 19 of the Specific Relief Act will have to give way.”

10.The learned Counsel for the contesting respondents submitted that the properties, which the petitioner/plaintiff claims to include as Item No.65 in the suit schedule property, is a property purchased by 11th defendant, 15th defendant, wife of 4th defendant and the wife of 10th defendant, out of the income derived from the firms, Seema Dharma Industries and Karthick Sulphate. Hence, the petitioner/plaintiff cannot claim that the property was purchased out of the joint family income. He further submitted that properties purchased by the female members cannot be sought for family partition and sought dismissal of these petitions. In support of his contention, the learned Counsel relied on the order of this Court in **(2010) 1 MLJ 1019** between **K.V.Ramasamy and another vs K.V.Raghavan and others**, wherein, this Court had held as follows:



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“34.From the conjoint reading of the decisions referred to supra, the following aspects can be culled out easily:

a)The joint family nucleus must have left sufficient surplus income so as to enable acquisition.

b)Initially burden lies upon a member who alleges that a particular property is a joint family property to the extent that the alleged joint family nucleus must have left sufficient surplus income and by utilising the same, the property in question could have been acquired.

c)If the initial burden as referred to above is proved then the burden shifts to the member of the joint family setting up claim that it is his personal property and the same has been acquired without any assistance from the joint family property.

d)Failure to prove existence of nucleus, the inevitable presumption is that the acquisition in question is nothing but self acquisition.

e)Mere fact of existence of a joint family does not lead to presumption that a property held by any of its member is joint family property unless the above aspect are proved.

f)If the property acquired is standing in the name of the female member of a joint family, she need not prove as to how she acquired it.”

11.Heard the learned Counsels appearing on either side and perused the materials available on record.

12.The only consideration in both the Civil Revision Petitions is with regard to whether Swathyrekha, wife of 10th defendant and Karthika, wife of 4th defendant to be made as defendants 23 and 24 and whether the property purchased by them to be included in the suit as Item No.65.



13.The plaintiff contended that the property, which was purchased by the wives of 4th and 10th defendants, is situated in the midst of the family property and the same was purchased by them out of the incomes derived from the family income and therefore, the said property purchased by them on 14.09.2016 is the subject matter to be dealt with by adducing sufficient evidence.

14.The learned Counsel for the contesting respondent relied upon a judgment of this Court in *K.V.Ramasamy's* case (cited supra) for the proposition that any property, which stands in the name of female cannot be made as a subject for partition. There is no dispute with regard to the said proposition. On the other hand, the learned Counsel for the petitioner/plaintiff contended that when there is a serious doubt in the mind of the plaintiff in a partition suit and the parties are relatives and the properties are purchased from the incomes derived out of the family business and therefore, the properties purchased on 14.09.2016 should be examined by the trial Court by including the said property as Item No. 65 and arraying the defendants 23 and 24 in the suit.



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15.As per the dictum of the Hon'ble Supreme Court and this Court relied upon by the learned Counsel for the petitioner, all the judgments would clearly state that a property, which was purchased during the pendency of the suit is a subject matter as per Section 52 of Transfer of Property Act. Any reason given by the subsequent purchaser cannot be a ground that he is a *bona fide* purchaser or there was no encumbrance or the subsequent purchaser was not aware of the litigation between the parties has of no use and such execution cannot be considered in view of Section 52 of Transfer of Property Act.

16.Order 1 Rule 10(2) CPC reads as follows:

*“10 (2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, **order** that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in **order** to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

17.As per Order 1 Rule 10(2) CPC, the primary consideration for the Court to see whether the parties to the *lis* are necessary and whether if the proposed



persons who are not impleaded in the suit as defendant's, would not cause injustice to the *lis*.

18. In view of the same, the property purchased by the 11th defendant, 15th defendant, wife of 4th defendant and the wife of 10th defendant, is a matter to be adjudicated by the trial Court by impleading the proposed respondents 23 and 24.

19. In view of the same, the orders passed by the trial Court in I.No.22 of 2018 and I.A.No.30 of 2019 in O.S.No.41 of 2015 are set aside and the Civil Revision Petitions are allowed. Since the suit is of the year 2015, the trial Court is directed to conclude the entire proceedings within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

05.12.2024

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To

The Additional District and Sessions Judge, Theni @ Periyakulam.



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N.SENTHILKUMAR, J.

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