



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 25.06.2025**

**CORAM**

**THE HON'BLE MR. JUSTICE M.DHANDAPANI**

**C.R.P.[PD](MD)Nos.1873 & 1874 of 2021**

**and**

**C.M.P.(MD)No.10047 of 2021**

1.D.Thangaraj

2.Sebastian

3.Ayyappan

..Petitioners in

C.R.P.(MD).Nos.1873 & 1874 of 2021

Vs.

1.G.Kalpana

2.M/s.Filatex India Limited,  
New Delhi.

...Respondents in

C.R.P.(MD).Nos.1873 & 1874 of 2021

**COMMON PRAYER:** Civil Revision Petitions are filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed in I.A.Nos.627 & 628 of 2015 in O.S.No.78 of 2006 dated 18.09.2021 on the file of the Additional District Munsif Court, Valliyoor by allowing this Civil Revision Petition.



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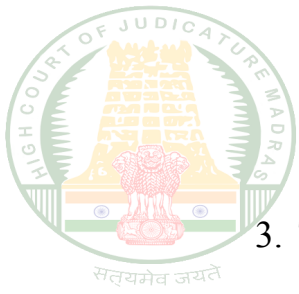


|                 |                                        |
|-----------------|----------------------------------------|
| For Petitioners | : Mr.H.Arumugam<br>In Both Petitions   |
| For R-1         | : Mr.S.R.Anbarasu<br>In Both Petitions |
| For R-2         | : No Appearance<br>In Both Petitions   |

### **COMMON ORDER**

These Civil Revision Petitions have been filed seeking orders to set aside the fair and decretal order dated 18.09.2021 passed in I.A.Nos.627 and 628 of 2015 in O.S.No.78 of 2006 on the file of the Additional District Munsif Court, Valliyoor.

2. The petitioners filed a suit in O.S.No.78 of 2006 before the learned Additional District Munsif, Valliyoor, seeking partition and separate possession of their 2/3rd share in the suit schedule property. A preliminary decree was passed on 19.10.2009 and a final decree was passed on 17.12.2011. Thereafter, the first respondent, who had purchased the property from the second respondent during the pendency of the suit, filed applications in I.A.Nos.627 and 628 of 2015 to set aside the preliminary and final decrees. By an order dated 18.09.2021, the trial Court allowed both applications. Aggrieved by the said order, the present Civil Revision Petitions have been filed.



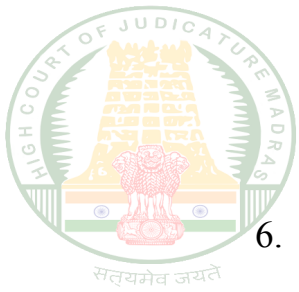
3. The learned counsel appearing for the petitioners would submit that originally the suit property belonged to one Sivan and he died leaving behind his four sons, namely, Sivan Elangamani, S.A.Dharsan, Arumugam and Abrahan. The said Sivan Elangamani and Abraham died without any issues and the said S.A.Dharsan died leaving behind the first petitioner as his legal heir and the said Arumugam died leaving behind two sons, namely, the third petitioner herein and one Savariappan as their legal heirs and the said Savariappan died leaving behind the second petitioner herein as his legal heir and as such the petitioners are entitled to  $2/3^{\text{rd}}$  share in the suit property.

4. In the suit, the second respondent filed a written statement stating that the property had been orally partitioned prior to the year 1966, and through the said oral partition, the son of late Sivan, namely Sivan Elangamani, sold the plaint schedule property to one Muthusamy on 18.06.1966, as evidenced by Document No.1386/1966. Subsequently, Muthusamy sold the property to M/s. Subash Projects and Marketing Limited, Bangalore, on 02.01.1995, as per Document No.30/1995. Thereafter, on 31.01.1995, the second respondent purchased the plaint schedule property from the said company, as evidenced by Document No.823/1995. Subsequently, the second respondent was set ex parte. A preliminary decree was passed on 19.10.2009, followed by a final decree on 17.12.2011. During the pendency of the suit, and prior to the passing of the



preliminary decree, the first respondent purchased the property from the first respondent Company on 25.09.2008. Thereafter, the first respondent filed interlocutory applications in I.A. Nos.627 and 628 of 2015 to set aside the preliminary decree dated 19.10.2009 and the final decree dated 17.12.2011, which were allowed.

5. The learned counsel for the petitioners would further submit that the first respondent is admittedly a party to the partition suit filed by the petitioners, whereas the second respondent alone was originally arrayed as a defendant. The second respondent had purchased the entire property from one Muthusamy, who was not the absolute owner of the property. The suit property, in fact, belonged to other persons, namely, S.A.Dharsan and Arumugam. The petitioners, being the legal heirs of S.A. Dharsan, Savariappan, and Arumugam, are entitled to claim 2/3rd share in the property. Furthermore, the purchase of the property by the first respondent, after the filing of the suit, is not valid and is hit by the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882. However, the first respondent impleaded herself in the suit in the year 2013, and after the impleading petition was allowed, the present interlocutory applications were filed. The order passed by the trial Court in this regard is not sustainable in law. In support of his contentions, the learned counsel for the petitioners relied upon the judgment of this Court in ***Ram Prakash Agarwal and Another v. Gopi Krishnan (died through LRs) and others***, reported in **2013 (2) MWN (Civil) 203**. Accordingly, he prays for allowing these petitions.



6. Per contra, the learned counsel appearing for the first respondent would submit that, admittedly, an *ex parte* decree was passed against the second respondent. Immediately after coming to know about the preliminary and final decrees granted by the trial Court, the first respondent filed interlocutory applications before the trial Court. At the time of purchase, there was no encumbrance recorded on the suit property. In the absence of any such encumbrance, the first respondent, being an innocent purchaser, would not have hesitated to purchase the property. Therefore, considering the bona fide nature of the transaction, the trial Court allowed the applications and set aside the preliminary and final decrees, thereby restoring the suit. Accordingly, he prays for dismissal of these petitions.

7. Upon perusal of the materials and the submissions made by the learned counsel on both sides, this Court finds that the first respondent purchased the suit property on 25.09.2008, i.e., during the pendency of the suit. However, she was not made a party to the original suit proceedings and was impleaded only in the year 2013. The trial Court, after considering her plea and the fact that the earlier decrees were passed *ex parte*, rightly allowed her applications to set aside the preliminary and final decrees.



8. The contention of the petitioners that the sale in favour of the first respondent is hit by the doctrine of lis pendens under Section 52 of the Transfer of Property Act, 1882, cannot be accepted in this case. The trial Court, on appreciation of facts, held the first respondent to be a necessary party and allowed her to contest the matter afresh, in the interest of justice. The judgment relied upon by the learned counsel for the petitioners stated supra, is distinguishable on facts and does not apply to the present case.

9. This Court finds no irregularity or illegality in the impugned order passed by the trial Court warranting interference under Article 227 of the Constitution of India.

10. Accordingly, the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**25.06.2025**

Internet:Yes/No

Index:Yes/No

TSG



To

1.The Additional District Munsif, Valliyoor.

2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

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M.DHANDAPANI, J.

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