



CRP(MD)No.739 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.739 of 2017
and
C.M.P(MD)No.3394 of 2017

1.Ganapathi Udaiyar
2.Poomayil
3.Baskar

... Revision Petitioners/Respondents 1 to 3/
defendants 1 to 3

Vs

1.Kasinathan
2.Chellammal
3.Vasantha
4.Panchavarnam

... Respondents 1 to 4/Respondents 1 to 4/
Plaintiffs

5.Bharathi

... 5th Respondent/Proposed Respondent/
Proposed 4th Respondent

Prayer:

This Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 13.02.2017 made in I.A.No.388 of 2016 in O.S.No.68 of 2006 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District.



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For Petitioners : Mr.S.Sivathilakar

For Respondents : No Appearance

ORDER

The Civil Revision Petition is filed to set aside the fair and decretal order dated 13.02.2017 made in I.A.No.388 of 2016 in O.S.No.68 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District.

2.The respondents 1 to 4 are the plaintiffs and the petitioners are the defendants in the suit in O.S.No.68 of 2006. The suit was filed for partition and the same was ended an ex-parte. In the meanwhile, the respondents 1 to 4/plaintiffs filed an appeal before the First Appellate Court in A.S.No.25 of 2011. The First Appellate Court had remanded the same before the trial Court. Against which, the respondents 1 to 4 had filed an application in I.A.No.15A of 2010 to implead the subsequent purchaser and the said application was dismissed for non-payment of batta and thereafter, the present application in I.A.No.388 of 2016 has been filed with the very same cause of action.



3.Despite service of notice and paper publication, the respondents have not appeared before this Court either in person or through the pleaders.

4.Admittedly, it is a case of partition and the respondents 1 to 4/plaintiffs had not only suppressed the earlier filing of I.A.No.15A of 2010 for the very same prayer but had now presented this application.

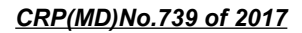
5.The learned counsel for the revision petitioners would rely upon the Judgment of this Court in ***Shakeela Begum Vs. Mohammed Yakkub (deceased) & others*** reported in ***2013 (2) MWN (Civil) 718***. The relevant paragraphs of the said Judgment are extracted hereunder:

“....24.According to me, in the reported judgments of the Hon'ble Supreme Court, viz. Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd., 2010 (5) CTC 354 (SC): AIR 2010 SC 3109 2010 (7) SCC 417; Vidur Impex and Traders Pvt. Ltd. and others v. Tosh Apartments Pvt. Ltd. and others, 2012 (3) MWN (Civil) 87 (SC): 2012 (8) SCC 384: and Amit Kumar Shaw v. Farida Khatoon, 2005 (4) CTC 47 (SC) : AIR 2005 SC 2209 (supra), the Hon'ble Supreme Court ordered impleadment of transferee pendente lite in a Suit for specific performance holding that the transferee pendente lite has got a substantial interest in the suit property and any decree that may be passed would affect his rights also. But, in a Suit for partition, the position is different. In the Suit for partition, while passing a preliminary decree, the entitlement of a party to a share in the suit properties is determined. As stated supra, in the Suit for partition, if sharers were not



impleaded, then, the Suit is liable to be dismissed on the ground of non-joinder of necessary parties. But, insofar as the subsequent purchasers are concerned, they cannot be considered as necessary parties and they may only be considered as proper parties.

25. In the judgment reported in Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd., 2010 (5) CTC 354 (SC): AIR 2010 SC 3109: 2010 (7) SCC 417 (supra), the Hon'ble Supreme Court defined the term 'proper party', as party, whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute in the Suit, though he need not be a person, in favour of or against whom the decree is to be made. It is held that the fact that a person is likely to secure a right/interest in a suit property, after the Suit is decided against the Plaintiff, will not make such person a necessary party or a property party to the Suit for specific performance. Therefore, the transferee pendente lite secured right to work out equity in final decree proceeding and therefore, at the stage of passing preliminary decree, he is not a necessary party, as his interests are taken care of by his vendors. Therefore, the transferee pendente lite are necessary parties for complete, effective and adequate adjudication of the dispute while passing the final decree, as allotment of properties would be made only in the final decree. In such situation, it must be held that the Suit is liable to be dismissed for non impleadment of transferee pendente lite and as held by the Hon'ble Supreme Court in the judgment reported in Dhanalakshmi and others v. P. Mohan and others, 2007 (3) CTC 332 (SC): 2007 (1) SCC 519, the transferee pendente lite are entitled to come on records in order to work out the equity in their favour in the Final Decree proceedings. In that reported case, the persons purchased undivided share of a co-sharers, prior to the filing of the Suit for partition and purchasers filed an Application to get themselves impleaded in the Suit for partition and in that context, the Hon'ble Supreme Court held that by reason of the purchase by a third party of the undivided share in the suit property, the



29. Therefore, I am of the opinion that the Trial Court ought not to have dismissed the Suit for non-joinder of subsequent purchasers, in the absence of any details given by the Respondents/Defendants, and subsequent purchasers may be proper parties and their presence is required only at the time of Final Decree proceedings and those persons can also be impleaded at the stage of the final decree to work out their remedies. Therefore, the point for consideration is answered in favour of the Appellant/Plaintiff, and, I hold that in a Suit for partition, in the absence of any particulars provided by the Defendants regarding the subsequent transferees, the Suit cannot be dismissed on that ground and



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subsequent purchasers can be added in the Final Decree proceeding, as they will have to work out their rights with respect to the shares allotted to their vendors.”

6.As per the dictum of the Hon'ble Supreme Court of India, which has been enumerated in the above said Judgment, they are only parties and not necessary parties in a suit of partition.

7.In view of the same, the order passed by the learned District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District, in I.A.No.388 of 2016 in O.S.No.68 of 2006, dated 13.02.2017, is set aside and this petition is allowed. No costs.

8.Since the suit is of the year 2006, the learned District Munsif cum Judicial Magistrate, Thiruvadanai, Ramanathapuram District, is directed to dispose of the case in O.S.No.68 of 2006, within a period of one year from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

08.01.2025

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

The District Munsif cum Judicial Magistrate,
Thiruvadanai, Ramanathapuram District.



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N.SENTHILKUMAR, J.

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