

**G. Krishnamoorthy Vs. Sukumar,**

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**SooperKanoon Citation :** [sooperkanoon.com/779712](http://sooperkanoon.com/779712)

**Court :** Chennai

**Decided On :** Jan-23-2003

**Reported in :** 2003(1)CTC405; (2003)1MLJ623

**Judge :** S. Jagadeesan and ;D. Murugesan, JJ.

**Acts :** Other Services Rules - Order 36, Rule 11

**Appeal No. :** O.S.A. No. 474 of 2002

**Appellant :** G. Krishnamoorthy

**Respondent :** Sukumar, ;mahesh Kumar (Minor), ;arun Kumar (Minor), Minors  
Rep. by their Brother, ;munirathinammal

**Advocate for Def. :** G.R. Lakshmanan, Adv. for respondent-1 and ;D. Rajagopal,  
Adv. for respondent-5

**Advocate for Pet/Ap. :** K. Ramu, Adv.

**Judgement :**

**S. Jagadeesan, J.**

1. The appeal arises out of the final decree passed in Application No. 1502 of 1994 in C.S.62 of 1982. The appellant, third party to the proceeding, has filed this appeal. The respondents 1 to 3 filed the suit for partition, claiming 3/8th share in

the properties against the respondents 4 and 5. A preliminary decree was passed on 19.10.1990. Pending the suit the fourth respondent died. Consequently the respondents 1 to 3 are entitled for half share and the fifth respondent for the remaining half share in the suit properties.

2. The respondents 1 to 3 filed Application 1502 of 1994 for passing the final decree. Three Advocate-Commissioners were appointed at different point of time. Finally the Report of the Advocate-Commissioner dated 19.9.2000 was accepted and the learned Judge passed the final decree, allotting item Nos.1a, 3, 4, 6 and 8 of the plaint schedule property to the share of the respondents 1 to 3. By way of owelty to equalise the value of the share, the fifth respondent was directed to pay a sum of Rs.1,64,370/- to the respondents 1 to 3. Consequently Item Nos.1b, 2, 5 and 7 were allotted to the fifth respondent.

3. Since the disputed item in this appeal being Item No. 6 of the plaint schedule alone, we do not propose to elaborate the facts in detail, as the same is unnecessary.

4. So far as 6th item is concerned, during the tendency of the suit, the 5th respondent sold the property to one K.C.S Nadar Memorial Education Improvement Committee on 3.1.1992. The appellant purchased the same on 3.12.1993 from K.C.S. Nadar Memorial Educational Improvement Committee.

5. The appellant herein filed Application No. 3211 of 1996 to implead himself as a party to the proceeding, as a purchaser pendent lite.

6. By order dated 21.1.1997 this court disposed of the application stating that the applicant being a purchaser pendent lite, he is not entitled for any claim for equity for the allotment of a particular item. But, however, the Advocate-Commissioner, during the allotment of the share in accordance with the preliminary decree, may consider the claim of the applicant for the allotment of item No. 6 of plaint schedule property, if such allotment would not affect the shares of other parties to the proceeding. This court further made it clear that the said order dated 21.1.1997 will not enable the applicant to put forth his claim as of right of equity.

7. Now by virtue of the allotment made by the learned Judge, Item No. 6 having been allotted to the share of the respondents 1 to 3/plaintiffs in the suit, the appellant has filed this appeal by way of one more round of litigation.

8. The learned counsel for the appellant vehemently contended that the appellant having invested huge amount on construction, the said Item No. 6 of the plaint schedule can be allotted to him and the respondents can be allotted Item No. 5 of the plaint schedule. The First Commissioner valued Item No. 5 at Rs.18,14,540/-; whereas item No. 6 is valued at Rs.18,12,262/-. On the basis of this valuation, the counsel for the appellant further contended that Item No. 5 being more value, the respondents may not be prejudiced in taking that property. It was further submitted that the appellant is willing to pay a sum of Rs.1 lakh by way of owelty to the respondents and at least on that basis the respondents may be directed to take Item No. 5 of the plaint schedule and give up Item No. 6 to the appellant.

9. On the other hand, the learned counsel for the respondents contended that Item No. 5 of the plaint schedule property is in occupation of the tenants and as such the respondents may not be in a position to get vacant possession inspite of getting the decree for partition. He further contended that the appellant being a purchaser from the transferee pendente lite, he is not entitled for any equity. Having purchased the property pending the litigation, the appellant ought not to have put up any construction in the site and as such now having taken the risk by investing the money pending the litigation, it is not open to him to make his offer. If at all the appellant wants, he can pay the land value as determined by the Commissioner for Item No. 6 and can have both the items 5 and 6.

10. We carefully considered the above contentions of both the counsel. As already stated, the suit was filed on 19.10.1982. The disputed Item No. 6 of the plaint schedule was sold to one KCS Nadar Memorial Educational Improvement Committee on 3.1.1992 by the second defendant in the suit. Subsequently on 3.12.1993 the appellant purchased the property. It is an admitted case that subsequently the appellant constructed the superstructure having purchased only the vacant site.

11. After going through the Commissioner's Report and the valuation of each item of the property, the learned Judge has made allotment to the respective parties. If the contention of the learned counsel for the appellant is to be accepted, then there is no purpose of the prohibition imposed under Section 52 of the Transfer of Property Act.

12. Section 52 of the Transfer of Property Act envisages that during the tendency of any proceeding, in any court, in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court.

13. From this provision it is clear that there is a statutory bar of alienation by the parties to the proceeding in respect of the properties which are the subject matter of the proceeding. If any one wants to alienate the property, they ought to have obtained the prior permission of the court.

14. The purpose of the provision is any party to the litigation shall not act adverse to the interest of the other by alienating any of the properties which are the subject matter of the litigation. The intention of the legislature is that no party to the proceeding can defeat the claim of other in case if he succeeds in the litigation. In fact the learned Judge after referring some of the judgments held that the appellant is not entitled to claim any equity as of right.

15. The appellant having purchased the vacant site, has no business to construct the building. When the alienation itself is not legally valid, the further action of the appellant in constructing the superstructure would expose his intention that by making investment he can claim equity and thereby deprive the other party's right.

16. If the contention of the learned counsel is to be accepted, in our view, it may develop over confidence in the mind of not only the litigants in the suit but also of the transferee who purchases the property pending the litigation. There may be chances that the transferee and the transferor who is one of the party to the litigation may collude to the prejudice of the other party to the litigation. When this

court finds no justification on the part of the appellant in constructing the superstructure pending the litigation, it is not possible to concede the request of the appellant.

17. When the learned counsel for the respondents contended that Item No. 5 being in possession of the tenants, we cannot compel the respondents to take Item No. 5 of the plaint schedule and force them to face one more round of litigation to evict the tenants. For the reasons stated above, we do not find any ground to interfere with the order of the learned Judge.

18. However, we make it clear that taking into consideration of the statement made by the learned counsel for the respondents that the appellant can pay the value of the land in respect of Item No. 6 and then to take the same, we give liberty to the appellant to seize the opportunity and to purchase peace by paying the land value, as determined by the Advocate-Commissioner Mr. K.M. Srirangan in his report dated 19.9.2000 to the respondents and the respondents are also directed to receive the same, in case if the value of the land is paid by the appellant within one month from today. With the above observation, the appeal is disposed of. Consequently stay C.M.P.19104/2002 is closed.

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