

R. Anitha, Vs. Ramakrishnan,

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Court : Chennai

Decided On : Mar-07-2002

Reported in : (2002)1MLJ813

Judge : M. Chockalingam, J.

Acts : Code of Civil Procedure (CPC) - Sections 115

Appeal No. : C.R.P. No. 1963 of 2000 and CMP No. 10646 of 2000

Appellant : R. Anitha, ;minor Krishnaveni and ;minor Thirukumaran Minors Are Rep. by Next Friend and Guardian Si

Respondent : Ramakrishnan, ;velumani, ;subbulakshmi, ;n. Ramasamy, ;A. Raja, ;ravi and R. Manoharan

Advocate for Def. : V. Subramanian, Adv.

Advocate for Pet/Ap. : N. Damodaran, Adv.

Disposition : Civil revision allowed

Judgement :

ORDER

1. It is brought to the notice of the court that service of notice on the respondents 1 to 3 is pending. In order to avoid the avoidable delay and in view of the fact that the available materials would be suffice to give a disposal to this revision, the

following order is made.

2. This revision has arisen from the order of the learned District Munsif dismissing an interlocutory application filed by the petitioners herein seeking for the impleadment of the respondents 4 to 7 herein as parties to the proceedings in I.A.No.1022/95.

3. It was a suit filed by the petitioners herein against the respondents 1 to 3 herein seeking for partition of the suit property. As could be well seen from the available materials on hand, a preliminary decree was passed in the said suit on 18.8.1995. Subsequently, final decree application in I.A.No.1022/95 was filed by the plaintiffs, wherein the trial court had appointed Mr. V. Ponnusamy, Advocate as a Commissioner to divide the suit properties into four equal shares. The said Commissioner on inspection, has filed his report. At that juncture, the instant application has been filed by the petitioners to add the respondents 4 to 7 as parties to the final decree proceedings. On contest, the lower court dismissed the said application, which has culminated in this revision.

4. The learned counsel appearing for the petitioners would submit that in view of the fact that the petitioners came to know about the purchase of a portion of the suit property by the respondents 4 to 7 from the first respondent herein only after the filing of the report by the Commissioner appointed by the trial court, the respondents 4 to 7 have got to be necessarily impleaded as parties; that the approach of the trial court suffers from material illegality; that even though the preliminary decree was passed, still the said alienees could be added as parties to the said suit for the effective adjudication of the controversy between the parties and so also for avoiding multiplicity of proceedings; and hence, they should be added as parties to the proceedings. Countering to the above contentions of the petitioners' side, the learned counsel appearing for the respondents 4 to 7 would urge that the respondents 4 to 7 have purchased the eastern half of the suit properties from the defendants 1 and 2 through their power agent A. Thangavel on 5.6.92 and 3.6.92; that the defendants 1 and 2 were keeping mum till 1995, and they instigated the petitioners herein to file the above suit for partition; that the plaintiffs and the defendants 1 to 3 have joined together and allowed the plaintiffs

to file the said suit; that the instant application for impleadment is a belated one; and that since the respondents 4 to 7 herein are not necessary or proper parties, the request of the petitioners has got to be rejected.

5. As could be well seen from the available materials, pursuant to a preliminary decree, that was passed on 18.8.1995 in a suit for partition, filed by the petitioners-plaintiffs, an application was taken out by them for passing of final decree. During the pendency of the same, an Advocate Commissioner was appointed to divide the suit properties into four equal shares. The Advocate Commissioner has returned the commission warrant stating that he could not execute the commission warrant; that there were constructions on the eastern half of the suit property, put up by persons, who have purchased the same from the defendants 1 and 2 even prior to the suit, and hence the suit property could not be divided into four equal shares, as per the preliminary passed by the trial court. As per the preliminary decree, the suit property was to be divided into four equal shares, and three of such shares were to be allotted to the plaintiffs. Thus, from the report of the advocate commissioner, it would be abundantly clear that though a preliminary decree was passed in favour of the plaintiffs, it could not be given effect to. Under such circumstances, the plaintiffs filed the instant application to implead those persons, who purchased the eastern half of the suit property as parties viz. respondents 4 to 7 in the final decree proceedings. The 4th respondent herein inter alia contended that an extent of 20 feet in the east- west was sold to him, while 20 feet in the north-south on the northern side of the property was sold to the respondents 5 and 6 herein, both by a registered sale deed dated 3.6.92 by the defendants 1 and 2 through their power of attorney, and that an extent of 20 feet in the east west and 20 feet in the north-south situated on the northern side of the property was sold by the defendants 1 and 2 to the 7th respondent herein. Thus from the averments in the counter to the said application, it would be clear that the eastern half of the suit property was sold by the defendants 1 and 2 to the proposed respondents 4 to 7 even in the year 1992. The said suit for partition was filed only in the year 1995, and thus, the sale of the eastern half has taken place even prior to the filing of the suit.

6. What was contended by the respondents 4 to 7 before the lower court and equally here also is that the said sales were made even in the year 1992; that the plaintiffs had the full knowledge of the sale and the possession of the proposed respondents 4 to 7, pursuant to the sale deeds, but they had not impleaded them as parties to the suit, and thus, at this juncture they should not be allowed to add them as parties to the final decree proceedings.

7. In support of his contention, the learned counsel for the petitioners relied on a judgment of this court reported in 1970 (1) M.L.J. 243 (SWAYAMPRAKASAM ALIAS CHIDAMBARANATHAN V. R.VIJAYARANGAM) and rendered by His Lordship Justice R. Sadasivam, as he then was, wherein it was held as follows:

'Civil Procedure Code (V of 1908), Order I, Rule 10(2) - Scope - Suit for partition - Preliminary decree - Respondent, if could be impleaded as a party to the suit at the stage of the final decree proceedings.

Order I, rule 10(2) of the Civil Procedure Code gives jurisdiction to the Court to order that the name of any person who ought to have been joined 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 at any stage of the proceedings. The proceedings in a suit for partition cannot come to an end till the final decree is passed and hence an order directing a party to be added under Order I, rule 10, Civil Procedure Code, may be made in a suit for partition before it is actually terminated by the passing of the final decree.'

8. In support of his contention, the learned counsel for the respondents 4 to 7 relied on a decision of this Court reported in : (2001)1MLJ101 (BAKTHAVATSALAM V. ANJAPULI AND FIVE OTHERS), wherein it was held thus:

'It is clear that a person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle and questions involved in

the suit. If the question at issue between the parties can be worked out without any one else being brought in, the stranger should not be added as a party. In the light of the language used in Order 1, Rule 10(2) of C.P.C. as well as various decisions and in the light of factual position in our case that preliminary decree has already been passed and application for passing of final decree is pending before the Court below, I am of the view that purchasers of properties during the pendency of the suit are neither necessary nor proper parties inasmuch as they would be bound by the decree in the suit in view of the principle enunciated in Section 52 of the Transfer of Property Act. I hold that the parties sought to be impleaded as defendants in the suit and respondents in the final decree application are neither necessary nor proper parties. I have already stated that the alienees respondents 4 to 6 herein are not want to be made a party and they are willing to take the risk. It is settled law that any alienation subsequent to the filing of the suit is hit by the doctrine of lis pendens. The subsequent purchasers are aware of the proceedings and they are definitely bound by the decision in the suit and the proceedings.'

9. On careful perusal of the decisions relied on by the respective sides, this court is of the view that the judgment of this court reported in and relied on by the petitioners' side is applicable to the present facts of the case. The decision of this court reported in : cannot be applied to the present facts of the case for the simple reason that it was applicable to a case where some of the properties which formed part of the subject matter of a suit for partition, were sold after the preliminary decree. But in the instant case, the half of the property in respect of which partition was sought for, was sold even during 1992, when the suit for partition was instituted only in 1995. From the decision of this court reported in stated supra, it would be clear that the proceedings in a suit for partition cannot come to an end till the final decree is passed, and hence, an order directing a party to be added under Order 1, Rule 10 of C.P.C. could be made in a suit for partition before actually it is terminated by passing of the final decree.

10. Needless to say, the jurisdiction vested on the Court under Order 1, Rule 10 of Code of Civil Procedure to implead the third party has to be exercised judiciously. In the instant case, admittedly the proposed parties have purchased a part of the property even before the filing of the suit, but omitted to be added as parties, and

hence, they have to be necessarily added as parties to the final decree proceedings, without whose presence the issues between the parties could not be effectually and completely adjudicated upon. Therefore, the order of the lower court refusing to add the proposed parties as respondents 4 to 7 in the final decree proceedings cannot be sustained, but is liable to be set aside. The court below is directed to permit the petitioners herein to add the proposed parties as respondents 4 to 7 in the final decree proceedings, proceed with the matter and dispose it of in accordance with law.

M. Chockalingam, J.

11. In the result, with the above direction this civil revision petition is allowed, setting aside the order of the court below. I.A.No.156/99 is allowed. There shall be no order as to the costs. Consequently, connected CMP is closed.

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