

Lilly Vs. Tamimul Ansari.

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Court : Chennai

Decided On : Mar-14-2012

Judge : R.S.Ramanathan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.R.P.(NPD)No. 131 of 2012

Appellant : Lilly

Respondent : Tamimul Ansari.

Advocate for Pet/Ap. : Mr. P. Krishnan, Adv

Judgement :

Civil Revision Petition has been filed under Article 227 of the [Constitution of India](#) to set aside the order and decree in I.A.No.218 of 2011 in I.A.No.159 of 2009 in O.S.No.20 of 2000 on the file of the District Judge, Karaikkal dated 21.9.2011 and allow the above C.R.P.

ORDER

1. The defendants 3 and 4 in O.S.No.20 of 2000 on the file of the District Court, Karaikkal are the revision petitioners.

2. The 1st respondent herein is the 3rd party to the suit. The respondents 2 and 3 herein filed the above suit for partition and preliminary decree was passed on 7.6.2007. The defendants 3 and 4/ revision petitioners herein filed I.A.No.159 of 2009 in O.S.No.20 of 2000 for passing final decree and in that application the 1st respondent herein filed I.A.No.218 of 2011 to implead himself in the suit stating that he purchased the property from the defendants 1 and 2 who are not the parties to the revision. That application was allowed and as against the same, this revision is filed by the revision petitioners.

3. It is submitted by the learned counsel for the revision petitioners that the suit was filed in the year 2000 and during the pendency of the suit, the 1st respondent herein purchased the property under a registered sale deed dated 11.4.2003 and therefore he cannot be impleaded as a party to the suit and in support of his contention he relied upon the Judgements reported in 2001 (1) CTC 19 (Bakthavatsalam Vs. Anjapuli and 5 others), 1974 T.N.L.J, 256 (Annapoorani Ammal Vs. Jayavelu Mudaliar and another) and contended that being a purchaser pending suit he cannot be impleaded.

4. On the other hand, the learned counsel for the 1st respondent submitted that though the suit was filed in the year 2000, it was dismissed for default on 21.8.2002 and thereafter, the defendants 1 and 2 sold a portion of the property on 9.9.2002 to the 3rd party and from that party and from the defendants 1 and 2, the 1st respondent herein purchased the property on 11.4.2003 and at the time of purchase of the 1st respondent, there was no suit pending between the parties and the suit in O.S.No.20 of 2000 was restored only on 14.6.2006 and therefore on coming to know of the preliminary decree the 1st respondent herein filed the application to get himself as impleaded and that was also properly appreciated by the Court below, there is no merit in this revision.

5. It is seen from the Judgement relied upon by the learned counsel for the revision petitioners that this Court has held that when the properties are purchased during the pendency of the suit, the purchaser is neither a necessary nor a proper party and he is bound by the decree as the purchase is hit by the doctrine of lis pendens. But the facts of this case are different. As stated supra, after the suit was

dismissed on 21.8.2002 the properties were purchased from the defendants 1 and 2 by the 1st respondent herein on 11.4.2003 and on the date of purchase no suit was pending and therefore it cannot be contended that the 1st respondent has purchased the property during the pendency of the suit. The suit was restored only on 14.6.2006 and therefore the 1st respondent is entitled to himself as impleaded. Further in the Judgement reported in 2007 (5) MLJ 610 (SC) (Dhanalakshmi Vs. P.Mohan), the Hon'ble Supreme Court allowed the petition by purchaser pendente lite in a suit for partition.

6. Hence, I do not find any reason to interfere with the order of the Court below and the Civil Revision Petition is dismissed. No costs.

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