
(2009) 02 MAD CK 0134

In the Madras High Court

Case No : C.R.P. (PD) No. 3565 of 2008 and M.P. No. 1 of 2008

Rangamani @ Veerathal, Saraswathi and Rukmani

APPELLANT

Vs

Subbae Gounder and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (2009) 02 MAD CK 0134

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Karthikeyan, for the Appellant; P.T. Asha, for Sarvabhauman Associates for RR1 to 3 and J. Saravanavel, for R5, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Heard both sides.

2. The warp and woof of the relevant facts, which are absolutely necessary and germane for the disposal of this revision would run thus:

The revision petitioners/plaintiffs filed the suit in O.S. No. 131 of 2007 seeking preliminary decree for partition of the suit properties into five equal shares with reference to good and bad soil by appointing a Commissioner and allot three such shares together to the plaintiffs. While so, during the cross examination of DW2, the plaintiffs got an answer to the effect that the defendants entered into an agreement to sell with one Dr.Chandrika Krishnasamy to sell a part of the suit property. Whereupon the plaintiffs filed I.A. No. 251 of 2008 under Order 1 Rule 10(2) of the CPC so as to implead the said third party, viz. Dr. Chandrika Krishnasamy. However, the lower Court dismissed the said application. Being aggrieved by and dissatisfied with the said dismissal order, the present civil revision petition has been focussed on various grounds among others.

3. The learned Counsel for the revision petitioners/plaintiffs, placing reliance on the grounds of revision, would develop his argument to the effect that the third

party filed her counter displaying and demonstrating that in fact she had entered into an agreement to purchase certain portion of suit property with the defendants 1 to 3 and certainly at a later date it would create flutter in executing the decree, which she may be getting in her favour.

4. Whereas the learned Counsel for the defendants 1 to 3 would advance her argument that the third party herself had candidly and categorically stated in her counter to the said interim application that the petition filed by them had to be dismissed and in such a case, it is not open for the plaintiffs to implead her as one of the defendants.

5. At this juncture, I would like to cite the trite proposition of law that in a partition suit, the judgment in personam alone could emerge and not in rem. Any person acquiring any right over the shares of the co-sharers during the pendency of the suit can only step into the shoes of those sharers concerned and seek to work out their equities and nothing more. Any alienation made during the pendency of the suit would also be hit by lis pendens.

6. Hence, in such view of the matter, the order of the lower court does not warrant any interference. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.