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DHANLAKSHMI AND ORS.

v.

P. MOHAN AND ORS.

JANUARY 17, 2007

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[DR. AR. LAKSHMANAN AND V.S. SIRPURKAR, JJ.]

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Transfer of Property Act, 1882—Section 52—Transfer of property pending suit relating thereto—Transferee purchasing undivided share of co-sharers in the suit property—Right to be brought on record, in suit for partition by other sharer—Held: Right of other sharer in the suit will not affect his right in suit property by enforcing partition—Thus, transferee having purchased property from co-sharers are entitled to be impleaded to work out equity in their favour in final decree proceedings.

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First respondent filed suit for partition of his share in the property. Appellants purchased properties from second, third, fourth and sixth respondents by sale deeds. Appellants filed application for impleadment in the suit on the ground that they are *bona fide* purchasers for value and entitled for alienors share in equity, thus are necessary parties for effective adjudication of dispute. Trial Court dismissed the application holding that the sale in favour of appellants were covered by doctrine of *lis pendens* and they can only have whatever rights their transferors had. Appellants filed revision petition which was dismissed. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: Section 52 of the Transfer of Property Act, 1882 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of the respondent Nos. 2, 3, 4 & 6. First respondent has got an undivided share in the suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent in the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the other co-sharers, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. The appellants are necessary and

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proper, parties to the suit, which is now pending before the trial court. The order passed by the High Court is set aside and application for impleadment is allowed. [Paras 4 and 5] [1078-G-H, 1079-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 262 of 2007.

From the Final Judgment and Order dated 6.1.2005 of the Madras High Court (Madurai Bench) in C.R.P. (P.D.) No. 357/2004.

V.Prabhakar, Ramjee Prasad, Subramani and Revathy Raghavan for the Appellants.

R. Nedumaran for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : Leave granted.

2. This appeal is directed against the final judgment and order dated 6.1.2005 passed by the Madurai Bench of the Madras High Court in C.R.P. (P.D.) No.357 of 2004. We have heard Mr. V. Prabhakar, learned counsel for the appellants and Mr. R. Nedumaran, learned counsel for the contesting respondents.

3. The High Court dismissed the revision petition filed by the appellants herein against the order dismissing the application filed by them to implead themselves in the suit filed by the first respondent (P. Mohan) for partition of his share of the property in O.S. No.82 of 2004. According to the appellants, they have purchased the properties from the second, third, fourth and sixth respondents by two registered sale deeds dated 18.6.1999 and 21.6.1999 and they are the *bona fide* purchasers for the value and entitled for alienors' share in equity and, therefore, they are the necessary parties for effective adjudication of the dispute in O.S. No.82 of 2004. The Principal District Judge, Thanjavur came to the conclusion that since the sales in favour of the appellants were covered by the doctrine of *Lis Pendens* and since they can only have whatever rights their transferors had, it is necessary to deal with their rights separately and dismissed the application. Against that order, the appellants preferred the revision before the High Court. The High Court also dismissed the revision on the ground

A that the appellants are not entitled to be impleaded since the right that they may have cannot be larger than the right of their vendors, assuming that they are *bona fide* purchasers. The High Court holding so, dismissed the revision on the ground that there is no justification to interfere with the orders passed by the courts below. Aggrieved by the same, the appellants have come before this Court.

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Section 52 of the Transfer of Property Act reads thus:

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“52. *Transfer of property pending suit relating thereto*— During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and 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 and on such terms as it may impose.

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Explanation — For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

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4. Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of the respondent Nos. 2, 3, 4 & 6. It is not in dispute that the first respondent P. Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein in the suit or proceeding will not affect his right in the suit property by enforcing a partition.

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Admittedly, the appellants, having purchased the property from the other

co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trial Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings.

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5. We, therefore, set aside the order passed by the High Court and order the application for impleadment filed by the appellants herein and array them as party defendant Nos. 7, 8 & 9 in the Suit. The appellants will now be at liberty to file the written statements in the pending suit.

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6. In view of the order now passed by this Court, the preliminary decree passed by the Trial Court in the absence of the appellants cannot stand. We, therefore, set aside the preliminary decree and restore the suit to its original number and direct the Trial Court to dispose of the same on merits and affording opportunity to the appellants to file a written statement and after framing the necessary issues. The Trial Court is directed to dispose of this suit within six months from today.

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7. The Civil Appeal stands allowed on the above terms.

No costs.

N.J.

Appeal allowed.

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