

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUVALLUR

Present: Thiru J. Selvanadhan, B.Sc.,B.L.,
Principal District Judge, Tiruvallur

Tuesday, the 23th day of February 2021

I.A.No.04 of 2019 in A.S.33 of 2013

Usharani W/o. Pramod

...Petitioners/Proposed
Respondent No.45/Third Party/
Third Party

//Vs//

1.K.Rajmohan

2.K.Sitara

...Respondent/Appellants/
Third Party/Third Party

3.R. Viswanathan

.....Respondent/Respondent-1/
Petitioner/Plaintiff

4. Manimegalai

5. S.Raja

6. S.Rajesh

7. Kanagavalli

8. U.Rajkumar

9. U.Muth ukumar

10. U.Shakthivel

11. R.Padmanaban

12. R.Gurunathan

13. Gnanaraj

14. Radha

15. Balraj

16. Sarath Mohan

17. Dr.S.R.Subramaniam

18. Sivagami

19. Padma

20. Gnanajothi

21. Prema Kulothungan

22. Leela

23. J.Jayakanth

24.M.Jambunathan

25. Dhanalakshmi

26. P.K.Pushparaj

27. A.K.Usha

28. H.Babu@Hamsaveni

2. Brief averments of the petitioner in the affidavit are as follows:-

The petitioner is an innocent and bonafide purchaser of a part and portion of the property covered under the third party appeal in A.S.No. 33 of 2013 pending on the file of this court. The third party appeal in A.S.No. 33 of 2013 has been preferred by a couple who are innocent bonafide purchasers of Plot No. 21, which is another part and portion of the property covered under the final decree passed in I.A.No.289 of 2009 in O.S.No. 247 of 1996 on 30.04.2012 by the Hon'ble Sub Court, Ponamallee and the petitioner purchased 2 (two) vacant house sites, one bearing Plot.No.25A comprised in Survey No.402 & 403 sub divided as Survey No. 402/9 as per patta, measuring an extent of 1300 square feet and the other bearing Plot.No.25 comprised in Survey No.402 sub divided as Survey No.402/1B as per patta, measuring an extent of 2035 square feet, in all, 3335 square feet of vacant land in Sri Devi Nagar 3rd Street in Maduravoyal Madura Alapakkam Village, Ambattur Taluk, Tiruvallur District, herein after referred to as the "said property" from one R.Siddarraaj by a Sale Deed dated 16.06.2006 registered as Document No.3329 of 2006 on the file of the SRO, Virugambakkam for a valid sale consideration of Rs.12,93,980/- (Rupees Twelve Lakhs Ninety Three Thousand Nine Hundred and Eight Only). It is further stated that the vendor of the petitioner namely R.Siddarraaj purchased the said property from 1)K.Suresh Kumar and 2)Saroja through their power of attorneys, L.Rukmani and J.Jenitha vide a Sale Deed dated 10.02.2006 registered as Document No.653 of 2006 on the file of the SRO, Virugambakkam vide Document No. 2795/2000 dated

22.06.2000 and Document No. 3068 of 2000 dated 07.07.2000 on the file of the SRO, Virugambakkam. and the petitioner obtained Patta in her name bearing Patta No. 5184 dated 31.03.2010 that was issued by the Zonal Deputy Tahsildar, Ambattur. It is also stated that when the petitioner was about to proceed with the construction over the aforesaid property in the year 2009 after obtaining plan permission and permit for construction from the authorities concerned vide Planning Permit No. 139 and 140/2009-2010 dated 15.10.2009 upon payment of development charges, one R.Viswanathan, the 3rd respondent/plaintiff herein objected to the same alleging that he was the owner of the land and that he has filed a case in O.S.No.247 of 1996 on the file of the Sub Court, Ponnammallee, in which he has obtained an order in his favour. The petitioner also stated that the 3rd respondent/plaintiff herein failed and refused to furnish any papers to that effect and prevented the petitioner to perform "Boomi Pooja". The 3rd respondent/plaintiff also challenged the petitioner she will never get the said property. Aggrieved by the said objection, the petitioner contacted her vendor and obtained papers relating to the said suit in O.S.No.247 of 1996 on the file of the Sub Court, Poonammallee. In the said suit filed by the respondent/plaintiff for portion of his 1/5th share and the petitioner was not arrayed as a party neither her vendor, R.Siddaraj was a party. However, on consultation with her legal counsel and verification of court records, I came to know that a final decree was passed I.A.No.289 of 2009 in the aforesaid O.S.No.247 of 1996 on 30.04.2012 in which the said property was allotted to the share of the said R.Viswanathan, the 3rd respondent/plaintiff herein as part of his 1/5th share in the properties covered in the

partition suit. Immediately thereafter, she obtained the copies of the lower Court Judgment and decree and preferred a first appeal before this Hon'ble Court in A.S.No.32 of 2013 as against the final decree passed in the partition suit on 30.04.2012 by the Sub Court, Poonamallee in I.A.No.289 of 2006 in O.S.No. 247 of 1996, wherein the petitioner has pleaded that I am a bonafide and innocent purchaser of the said property for valuable consideration and that she was not a party in the said original suit for partition neither was my seller a party and that she will put to great financial hardship if the said property is allotted to the 1/5th share of R.Viswanathan (the 3rd respondent/plaintiff). the petitioner sought as per equity and fair justice that the said property of 3335 square feet shall be allotted to the share of the other co-owners of 4/5th share, that is,

a) Manimegalai, S.Rajarithina Sundaram, S.Rajesh (4th, 5th and 6th respondents herein -1/5th share);

b) Kanagavalli, U.Rajakumar, U.Muthukumar, U.Sakthivel (7th, 8th, 9th and 10th respondents herein -1/5th share);

c) R.Padmanaban (11th respondent herein-1/5th share);

d) R.Gurunathan (12th respondent herein-1/5th share);

who and/or their respective fathers have sold the said property to my predecessors in title. More so, admittedly, the aforesaid parties (respondents 4-12 herein who were arrayed as defendants in the partition suit) being her predecessors in title are entitled to 4/5th share in the properties covered under the partition suit as against the 1/5th share that the 3rd respondent/plaintiff is entitled to as per the preliminary decree. It is further stated in the affidavit that , as against the said final

decree passed in the partition suit on 30.04.2012 by the Hon'ble Sub Court, Poonamallee in I.A.No.289 of 2006 in O.S.No.247 of 1996, in all, 4 (four) appeals, Viz., A.S.Nos.32 of 2013 (by the petitioner herein), 33 of 2012, 38 of 2012 and 33 of 2013 (by the 1st and 2nd respondents/appellants herein) were preferred by innocent bonafide purchasers of properties (who were unaware of the pending 'suits' at the time of their respective purchase before this Court. But unfortunately, by way of a common judgment and decree dated 31.10.2013, the aforesaid four appeals were dismissed by this Court. In the said appeals in A.S.No.32 of 2013 preferred by the petitioner herein and A.S.No.33 of 2013 preferred by the 1st and 2nd respondents/appellants herein ONLY the plaintiff in the original suit was arrayed as the respondent and all the 42 sharers/defendants were not arrayed as parties. Moreover, the said appeals in A.S.Nos.32 of 2013 and 33 of 2013 arise out of identical facts and circumstances. It is also stated that in the second appeal vide S.A.No.663 of 2014 preferred against the common judgment and decree passed by this court inter alia in A.S.No.33 of 2013 by the 1st and 2nd respondents/appellants herein, the Hon'ble Madras High Court on 27.03.2015 was pleased to set aside the common judgment and decree of this Hon'ble Court passed on 31.10.2013 and remitted the appeal back to this Court for fresh disposal in accordance with law after impleading all the necessary parties. The petitioner further stated that unaware of the aforesaid order passed by the Hon'ble Madras High Court in S.A.No.663 of 2014 on 27.03.2015, she preferred the second appeal in S.A.No.576 of 2017 before the Hon'ble Madras High Court as against the common judgment and decree passed by

this Court in AS 32/2013 the 2nd appeal preferred by the petitioner arises out of the very same common judgment and decree dated 31.10.2013 passed by this Court. As such, the aforesaid judgment and decree passed by the Hon'ble Madras High Court in S.A.No.663 of 2014 applies for all the four appeals including A.S.No.32 of 2013 preferred by the petitioner and the binding decision of the Hon'ble Madras High Court in S.A.No.663 of 2014 passed on 27.03.2015 came to her knowledge much later and was placed before the Hon'ble Madras High Court for a similar order. Unfortunately, by oversight, without referring to the same, the Hon'ble Madras High Court on 07.11.2017 dismissed the S.A.No.576 of 2017 preferred by the petitioner. Therefore the petitioner preferred the SLP(C)No.9821 of 2018 before the Hon'ble Supreme Court, in which, on 27.04.2018 the Hon'ble Supreme Court has observed that since the order setting aside the decree of the first appellate court (this court) has not been considered by the Hon'ble Madras High Court, it is open to the petitioner herein to prefer an application for review and accordingly the petitioner preferred the Review Application No.165 of 2018 before the Hon'ble Madras High Court and the same was disposed off with a direction to approach this Court and therefore the petitioner filed the present application to implead the petitioner as proposed respondent No. 44 and also stated that the 3rd respondent/plaintiff executed a Settlement Deed on 27.04.2016 in favour of his daughter, Dr.Juliet Jaishree Rani and the same was registered as Document No. 2515 of 2016 on the file of the SRO, Virugambakkam, which deed has been executed during the pendency of the second appeal in S.A .No. 576 of 2017 before the Hon'ble Madras High Court and therefore

the said Dr.Juliet Jaishree Rani is also another necessary party to the fair adjudication of the present appeal apart from the petitioner herein. If this petition is allowed by this Court, no prejudice, loss, harm or injury will be caused to any of the respondents and thus the balance of convenience is squarely in favour of the petitioner , therefore prayed to allow the application. .

3. The averments made in the counter statement filed by the 1st and 2nd respondent in brief as follows:

The respondents specifically denied and the petitioner is put to strict proof of the same. Filing of the suit in O.S.No.247/1996 and A.S.33/2013, A.S.32/2013, A.S. 38/2013, A.S.78/2013 are all admitted herein. It is submitted in “SA.No.663/2014” only six months time has been granted by the Hon'ble High Court. The petitioner is unnecessarily dragging the matter and this petition has been filed only to protract the proceedings. The present petitioner has no locus standi to file this application. In paragraph 14 of the affidavit, she has clearly mentioned that the SA No. 576/2017 was dismissed on 07.11.2017. She has exhausted all her remedies. The Hon'ble High Court has given a final verdict and finality has been reached. As far as this petitioner is concerned once again this matter cannot be reopened and the present petitioner cannot be impleaded as party in this appeal. Hence, it is prayed to dismiss the application .

4. The averments made in the Common Counter statement filed by the 3rd Respondent in brief as follows:

The proposed 46th Respondent is his daughter. The above application is neither

maintainable in law nor on facts. As admitted by the petitioner the petition property is part of a large extent of property in respect of which he has filed a suit O.S. 247/1996 in the Hon'ble Sub Court at Poonamallee seeking partition of the properties by metes and bounds and allotment of 1 / 5th share in suit properties in his favour and for consequential other reliefs. The suit instituted in the year 1996 has been pending in the said Hon'ble Court and ultimately a preliminary decree was passed therein in his favour as early as on 31.12.2008, after serious contest by various defendants and parties subsequently impleaded as parties thereto. The allegations in the affidavit in support of the application filed by the petitioner long after filing of the suit while being one for partition filed by him was pending obviously being fully aware of the pendency of the proceedings, the petitioner purported to have purchased a portion of the suit land from one Mr. Siddaraj on 16.06.2006. Even the petitioners' vendor Mr.Siddaraj from whom the petitioner purportedly purchased a portion of the suit property had himself purchased the said portion of the suit land only on 10.02.2006 from one Mr. Suresh kumar, son of Kasi Viswanathan, and Mrs, Saroja that too through their power of Attorney agents Mrs. L. Rukmani and Mrs. J. Jenitha. The said persons who purportedly sold the portion of the suit property to the petitioner's vendor Mr. Siddaraj have themselves purportedly purchased the portion of the property only in the year on 22.06.2006 and dt. 07.07.2006 respectively. All these sale transactions are admittedly long after filing of the original suit O.S. 247/1996 by him for partition and separate possession of his admitted share in the suit property. Larger extent of property of which the extent being subject matter of here was part

and parcel was the subject matter of the suit and the 3rd respondent sought relief of partition and separate possession of his share therein. It is obvious the alleged purchase of portion of the suit property by the petitioner and even her vendors is hit by the prohibition under the Doctrine of Lis Pendens and the petitioner cannot have once again a separate later trial when her predecessors in title have admittedly already been parties to the suit and the decree was passed after prolonged trial and full contest by them. The petitioner who must be watching the trial proceedings, has now chosen to come forward with the above false application with ulterior motive. On this short ground alone the present petition is liable to be dismissed in limini.

It is also contended that the suit filed by him in the year 1996 was dragged on in the Trial Court by defendants each time some third party claiming right in a portion of the suit property by reason of an alleged subsequent sale from or through the originally impleaded defendants and filing applications repeatedly for impleadment and the trial was inordinately prolonged and as already submitted ultimately preliminary decree could be passed on 31.12.2008. As observed and held by the Hon'ble First Appellate Court, it was confirmed in A.S. No. 50/2009 and S. A. 161/2011 by this Hon'ble Court. On his application for passing of a final decree in I. A.No. 289/2009 final decree was passed as early as on 30.04.2012 and the aggrieved parties took up the matter in Appeal in AS 33,38 & 32 of 2012 and 33 of 2013 which were disposed off by the Hon'ble I Appellate Court as early as on 31.10.2013. As per the final decree the Hon'ble Court after demarcation of suit property into plots by an advocate commissioner appointed therefor allotted plots of land bearing plot Nos.

21,25A,25,27 & 29A towards the 3rd respondent/plaintiff share of suit property. It appears the said plots include the property in which the present petitioner now belatedly claims rights that too by lis pendens purchase. The petitioner is very well aware of the filing of the main suit O.S. 247/1996 by him in the Trial Court and various proceedings therein culminating in passing of a final decree under which portion of the suit property covered by the said plots have been allotted to his share in the presence of the petitioner's predecessors in title who were parties to the proceedings as well as the subsequent appeal proceedings. They obviously sufficiently protracted the proceedings by raising all sorts of false pleas and dragged on the matter for more than 20 years. It is obvious the present petitioner to further protract the proceedings by raising false and untenable claims, filed the above petition.

It is also contended in the counter that the petitioner has deliberately omitted to state she attempted to put up the construction over the portion of the suit land and when she purportedly moved the Hon'ble I Appellate Court with her alleged claims in the suit land. It is further disclosed in the affidavit filed by the petitioner herein that she moved the appeal before the I Appellate Court while A.S. 32/2012 filed by the other party – defendants to the suit was pending and her application was obviously and rightly rejected by the Appellate Court by the Appellate Court in A.S.No.33/2013 be well reasoned common judgment dt. 31.10.2013. He filed E.P. 64/2012 in the above suit O.S.247/1996 seeking delivery of possession of plot No. 21,25,25A,27 & 29A in S.No. 402 of Maduravoyal village, as per the final decree passed in his favour

by the Trial Court and confirmed in the appeals by the Hon'ble I Appellate Court and Execution Court by a detailed order dt. 11.03.2014 directed delivery of possession of plot No.25 and 25A to him, by 04.08.2014 and after such delivery by the bailiff recorded the delivery of possession of the said plots to him as early as on 20.08.2014. He is in physical possession of the said plots of suit land ever since then. He emphatically deny the allegation in the affidavit that the petitioner has allegedly been in possession of the plots land being the subject matter of the above second appeal at any time. The records relating to E.P. 64/2012 in the suit O.S. 247/1996 in the Hon'ble Trial Court, wherein through bailiff he has recovered possession in E.P. proceedings of the property being the subject matter of this petition, amply establish petitioner was never in possession of any portion of the property. He had already settled the said property on his daughter a third party as early as on 27.04.2016 and she has since taken possession thereof and has been in absolute physical possession thereof by making necessary mutation in Revenue and other records. The present petition filed by the petitioner herein is also liable to be rejected for want of subsisting cause of action. The above petition is not at all sustainable in this Court as there is no question of law much less substantial question of law involved, nor made out by the Petitioner / Proposed Respondents.

The present petitioner has now belatedly approached this Hon'ble Appellate Court against the adverse orders passed by the Hon'ble I Appellate Court, namely, Hon'ble District Court at Tiruvallore dismissing in A.S.No.33/2012. . The petitioner herein filed a Second Appeal S.A.No.576/2017 against the judgment and decree in

A.S.No.32/2013 on the file of the Hon'ble District Court, Thiruvallur dt. 31.10.2013 party confirming the judgment and decree of the trial court in I.A.No.289/1996 in O.S.No.247/1996, the Hon'ble High Court by well considered judgment dt. 07.11.2017, dismissed the Second Appeal. Her further appeal to the Hon'ble Supreme Court in SLP.No. 9871/2018, the same was dismissed on 27.04.2018 by the Hon'ble Apex Court. However, taking advantage of an observation that it was open to the petitioner to file an application for review, the petition filed Review Application No. 165/2018 in the above Second Appeal, the petitioner herein filed Review Application No. 165/2018 in S.A.No.576/2017, and the Hon'ble High Court by order dt.04.12.2019 noting that pursuant to an earlier judgment in S.A.No. 663/2014, this Hon'ble Appellate Court has taken the matter afresh and orders have been reserved, permitted this Hon'ble court to consider her impleadment application afresh, on merits, that too as expeditiously as possible with in a period of four weeks. No fresh legal grounds have either been urged or made out by the applicant. As noted by the Hon'ble High Court in it's above order the petitioners counsel did not raise any legal ground, but urged that her case be considered on equity and the petition may be decided on merits. As admitted by the petitioner this respondent had earlier on 27.04.2016 when my rights in the property were consistently upheld by the Hon'ble Courts in the suit property allotted to his share he had under a registered settlement deed dated 27.04.2019, registered as Document No. 2515/2016 S.R.O Virugambakkam Settling the suit property in favour of his daughter Dr.Juliet Jaishree Rani and taking note of the same, the petitioner filed the above application now to

implead her as a necessary party to the application. On the same principle, equity works in her favour also and if the above applications are allowed her established rights will be affected. In such circumstances also the above main application is liable to be rejected in limini.

The petitioner herein has no right to maintain the above application as her as well as her vendor alleged purchase of the suit property is during the pendency of the above suit O.S.No.247/1996 filed by him for partition and separate possession of my admitted share in the suit properties. Such a sale is not at all sustainable as he advised to be hit by the principle of all "caveat Emptot". The petitioner is not at all entitled to maintain the above application as held by the Hon'ble Courts earlier and the application is liable to be dismissed in liminie. Therefore prayed to dismiss the application.

5. The point for consideration is whether the petitioner/ proposed party/3rd party is entitled to the relief as prayed for?

ON POINT

6. Heard both side argument. Perused the records. The petitioner/proposed respondent 45 filed the present application under Order 1 Rule 10 (2) CPC praying to implead the petitioner as proposed respondent No. 45 in the main appeal suit as well as the respondent No. 46 herein as proposed respondent No. 44 in the main Appeal Suit No.33/2013.

7. On the side of the petitioners Ex.P1 to P11 marked and no document marked on the side of the respondents. No oral evidence adduced by both sides.

Since the petition is filed under Order 1 Rule 10 CPC it is necessary to find out whether the petitioner/proposed respondent is necessary party to the proceedings. Before going to the merits of the case it is necessary to point out the background on which the petitioner filed the present application. The 3rd respondent herein namely Thiru R. Viswanathan filed a suit in OS 247/1996 on the file of Sub Court Poonamalleed claiming 1/5 share in the suit properties. In the said suit Preliminary decree was passed and the 3rd respondent/plaintiff filed an application in I.A. 289/2009 for passing of final decree and Final decree was passed by the Sub Court, Poonamallee on 30.4.2012. As against the Final decree passed the defendant No. 27 namely R. Rajeswari filed appeal in AS 33/2012, the 29th defendant namely Latha Rukmani filed AS 38/2012, one 3rd party namely Tmt. Usharani (the present petitioner herein) filed AS 32/2013 and the 3rd parties namely K. Rajmohan and Mrs. Sitara filed AS 33/2013 challenging the final decree passed in I.A 289/2009. All the 4 appeal suits were dismissed on 31.10.2013 by way of common Judgment by this Court (by my Predecessor) . As against the common Judgment passed the appellant in AS 33/2013 who are the 3rd parties in the appeal preferred 2nd appeal before the Hon'ble high Court in SA 663/2014 . The present petitioner who was a 3rd party in AS 32/2013 preferred 2nd appeal in SA 576/2017. The Hon'ble High Court in SA 663/2014 by Judgment dated 27.3.2015 set aside the common Judgment passed by this Court on 31.10.2013 in all the 4 appeals and remanded back the matter AS 33/2013 for fresh disposal with a direction to the appellants to implead all the necessary parties. The appeal preferred by the present petitioner as against the

Judgment in AS32/2013 before the Hon'ble high Court in SA 576/2017 was dismissed by the Hon'ble High Court in spite of mentioning the disposal of SA 663/2014. The appellant in SA 576/2017 preferred the SLP before the Hon'ble Supreme Court in SLP No. 9821/2018 and the Hon'ble Supreme Court dismissed the SLP with direction to the petitioner to prefer an application for Review before the Hon'ble High Court in SA 576/2017 based on which the present petitioner preferred the Review application No. 165/2018 and the Review application was also disposed off by the Hon'ble High Court with a direction to this Court to take up the application filed if any by the petitioner herein and dispose the same. Now the application in IA 5/2019 is pending for disposal which is the application filed under Order 1 Rule 10 CPC to implead the petitioner herein as proposed respondent No. 45 and also the respondent No. 46 herein as proposed respondent No. 44 in the appeal AS 33/2013. The petitioner side also filed application to re-open the appeal AS 33/2013 which is also pending for disposal in IA 4/2019.

8. The petitioner herein is the 3rd party in the suit and as per order of the Hon'ble High Court in Review application No. 165/2018 in SA 576/2017 filed the present application. As already stated the 2nd appeal preferred by the respondents 1 and 2 herein who are the appellants in AS 33/2017 preferred SA in SA No. 663/2014 and the said appeal was allowed by setting aside the common judgment of this Court and also directed the appellant to implead all the necessary parties. But the respondents 1 and 2 herein have not taken any steps to implead all the necessary parties in the present appeal AS 33/2013. The respondent No. 46 is none other than

the daughter of the 3rd respondent/plaintiff in the suit. The 3rd respondent executed a settlement deed in favour of R46 by way of settlement deed dated 27.4.2016 and therefore the petitioner wanted to implead the daughter of the 3rd respondent as proposed 44th respondent in the main appeal also.

9. Now it is necessary to find out whether the present petitioner as well as R46 are necessary parties to the proceedings in AS 33/2013. Admittedly the appellants in AS 33/2013 who are the respondents No 1 and 2 in the present application are also 3rd parties to the suit in OS 247/1996 filed by the 3rd respondent/plaintiff.

10. The contention of the petitioner in the affidavit is that she is an innocent bonafide purchaser of part and portion of the property concerned under the 3rd party appeal AS 33/2013 and the appellants in AS 33/2013 are also innocent purchasers of plot No. 21 which is another part and portion of the property covered under Final decree passed in IA 289/2009 in OS 249/1996 on 30.4.2012 by the Sub Court, Poonamallee. The contention of the petitioner is that she purchased two vacant house sites one bearing Plot No. 25 A comprised in Survey No. 402 and 403 sub divided 402/9 as per patta measuring to an extent of 1300 sq.ft and another plot No. 25 comprised in Survey No. 402 sub divided 402/1B as per patta measuring to an extent of 2035 sq.ft⁶ and totally 3335 sq.ft by way of sale deed dated 16.6.2006 from one R. Siddarraj under the document No. 3329/2006 on the file of SRO Virugambakkam for total sale consideration of Rs.12,93,980/- The further contention of the petitioner is that the vendor of the petitioner Siddarraj purchased the property on 10.02.2006 from one K. Sureshkumar and Saroja through their power of attorney

L. Rukmani and J. Jenitha. The said Sureshkumar and Saroja purchased the property by way of 2 sale deeds dated 22.6.2000 and 7.7.2000 vide document No. 2795/2000 and 3068/2000 respectively. The petitioner would contend that as innocent purchaser she applied patta in her name vide patta No. 5184 on 31.3.2010 and also obtained permission in 2009 for construction from the authorities and when proceeded with construction one R. Viswanath (R3/plaintiff) objected the construction alleging that he was the owner of the land and he filed a suit in OS 247/1996 on the file of Sub Court Poonamallee in which he obtained order and thereby refused the petitioner to perform Boomi Pooja. The petitioner approached the vendor and got the papers relating to the said suit in OS 247/1996 only the 3rd respondent filed the suit for partition of 1/5 share in the said suit. Neither the petitioner nor the vendor of the petitioner namely Siddarraaj were added as a party. The further contention is that the petitioner came to know about the passing of final decree in IA 289/2009 on 30.04.2012 in which the property was allotted to the share to his part of 1/5 shares and immediately she obtained copies and preferred AS 32/2013 as against the final decree passed before the Hon'ble High Court wherein the petitioner has pleaded that she is innocent purchaser and not party to the proceedings and the vendor of the petitioner also not party to the proceedings. It is also the contention of the petitioner that the petitioner sought equity and fair justice that the property purchased to an extent of 3335 sq.ft shall be allotted to the other co share holders holding 4/5 shares and the respondents 4 to 12 arrayed as defendants in the suit are entitled to the 4/5 shares whereas the 3rd respondent/plaintiff is entitled

to 1/5 share only. It is also the contention of the petitioner in the affidavit that by way of common judgment AS32/2013, 33/2012, 38/2012 and 33/2013 were dismissed by way of common judgment on 31.10.2013 against which the 3rd party filed SA 663/2014 who are the respondent 1 and 2 herein and the petitioner preferred SA in 576/2017. The Hon'ble High Court set aside the common judgment on 27.3.2015 by way of judgment in SA 663/2014 and unaware of the said fact the petitioner herein preferred appeal in SA 576/2017 as against the judgment passed by this Court in AS 32/2013 and the said SA was dismissed instead of reference made about the judgment in SA 663/2014 and the petitioner approached the Hon'ble Supreme Court by way of SLP 9821/2018. The Hon'ble Supreme Court directed the petitioner to prefer Review application and the petitioner preferred Review Application No. 165/2018 and based on the order passed now filed the application and therefore prayed for allowing the application as the petitioner is innocent purchaser and also necessary party to the proceedings.

11. The respondents 1 and 2 herein who are the appellants in AS 33/2013 admitted in the counter statement about the common judgment passed in 4 appeal suits and would also contend that the petitioner has no locus-standi to file the application and the petitioner admits the dismissal of 2nd appeal 576/2017 on 7.11.2017 and after exhausting all the remedies filed the present application, therefore the petitioner cannot be impleaded as proposed party and she cannot open the case, therefore prayed for dismissal of the application.

12. The 3rd respondent who is the plaintiff in OS 247/1996 filed counter

statement denying the petition averments and has taken following defenses.

1) the 3rd respondent/plaintiff filed the suit for partition claiming 1/5 share in the suit property and preliminary decree was passed on 31.12.2008.

2) R3 filed IA 289/2009 for passing of Final Decree which was also ordered on 30.04.2012

3) The petitioner fully aware of the suit pending and purportedly purchased the suit land from Siddarraj on 16.6.2006 and the said Siddarraj purchased the property on 10.2.2006 only and all the sale deeds are of the year 2006 which are during pendency of the suit in OS 247/1996 . All the appeal suits were dismissed by way of common judgment and the petitioner is well aware of the suit filed in OS 247/1996 and only to protract the proceedings filed the present application.

4) The respondent/R3 plaintiff filed E.P. 64/2012 for the delivery of the property and delivery was also effected and based on which the 3rd respondent executed the settlement deed in favour of his daughter on 27.4.2016 who has taken possession of the property and therefore the petition filed by the petitioner is liable to be rejected.

5) The petitioner belatedly filed the application, the 2nd appeal filed by the petitioner in SA 576/2017 was dismissed by the Hon'ble high Court on 7.11.2017 and therefore prayed for dismissal of the application.

13. The learned counsel for the respondents 17, 18,19 endorsed as no counter in the application.

14. The learned counsel for the petitioner argued the entire facts as set forth in the affidavit and has argued that the common judgment passed by this Court on

31.10.2013 was set aside by the Hon'ble High Court in SA 663/2014 and therefore the petitioner as a bonafide purchaser from 4/5 share holders is necessary party to the proceedings and thereby prayed for allowing the application. On the other hand the learned counsel for the 3rd respondent has argued that the suit was filed in the year 1996 and the claim of the petitioner that she purchased the property on 16.6.2006 and the purchase of the vendors and the petitioner on 10.2.2006 are all during the pendency of the litigation in OS 247/1996 and therefore the purchase of the property during the pendency of the lis are not necessary parties therefore prayed for dismissal of the application.

The learned counsel for the 3rd respondent to support the said argument relied on the following decisions.

- 1) 2007 AIR (A.P) 46 Pannala Renuka Vs. Kavali (Rajamouni) Venkataiah and another
- 2) 2007(4) ALT 17 Ramesh Chawla Vs. N. Srihari and others.
- 3) 2001 (1) MLJ 101 Bakathavatsalam Vs. Anjapuli .

Wherein the Hon'ble High Courts have held that the purchase of the property during the pendency of the litigation are neither necessary nor proposed parties.

15. The arguments advanced by both sides and the decisions as relied on by the learned counsel for the 3rd respondent are perused. With regard to the claim made by the petitioner that she was an innocent purchaser produced Ex.P1 to Ex. P11. Ex.P1 is the copy of the sale deed dated 22.6.2000 and Ex.P2 is the copy of sale deed dated 7.7.2000 the vendors of Siddarraj namely K. Sureshkumar and Saroja purchased the properties and Ex.P3 is the copy of General power of Attorney in

favour of Rumani and Jeneetha by the said Sureshkuymar and Saroja. Ex.P4 is the sale deed dated 10.2.2006 in the name of Siddarraaj executed by the General Power Agent on behalf of their principal K. Sureshkumar and Saroja, Ex.P5 is the copy of sale deed dated 16.6.2006 in the name of the present petitioner namely Usharani. Ex.P6 is the patta in the name of the petitioner with patta No. 5184 issued by the Zonal Deputy Tahsildar in respect of Survey No. 402/1B and Survey No. 402/0, Ex.P7, Ex.P8 and Ex.p9 are the permission and plan obtained by the petitioner for construction in the property purchased by the petitioner herein. Ex.P10 is the copy of settlement deed executed by R3/Plaintiff in favour of his daughter Dr. Tmt. Juliet Jaishree Rani who is the 46th respondent herein and Ex.p11 is the family tree. Now the petitioner is mainly claiming her right through Ex.P1 to Ex.P6 . The petitioner claims that she purchased the properties from 4/5 share holders whereas the 3rd respondent/plaintiff filed the suit claiming partition of 1/5 share only. The petitioner claims that she is a bonafide purchaser and also claims that neither the petitioner nor her vendor were parties in OS 247/1996 filed by the 3rd respondent/plaintiff herein. Even in the final decree application filed by the 3rd respondent/plaintiff in IA 289/2009, the present petitioner as well as her vendor were not parties. Apart from that the respondents 1 and 2 are the 3rd parties filed the present appeal AS 33/2013 they were also not made parties to the proceedings in the said suit. The perusal of copy of order of the Hon'ble High Court in SA 663/2014 reveals that the common judgment passed by this Court in all the 4 appeal suites AS 32/2013, 33/2012, 38/2012, and 33/2013 were set aside by way of judgment dated 27.3.2015.

The Hon'ble High Court in SA 663/2014 also directed the respondents 1 and 2 herein to implead all the necessary parties and proceed with the appeal suit AS 33/2013. But the respondents 1 and 2 herein as appellants in AS 33/2013 have not taken any steps to implead the petitioner herein or to implead the 46th respondent herein who is none other than the daughter of 3rd respondent herein. The Second Appeal preferred by the petitioner herein in SA 576/2017 was dismissed against which the present petitioner preferred SLP 9821/2018 and the SLP was also dismissed with a direction to the petitioner to approach the Hon'ble High Court and to file Review application based on which the petitioner filed the Review application in RA 165/2018 and the said Review application was disposed off by the Hon'ble High Court and the petitioner was directed to approach this Court with necessary application and also directed this Court to permit the appellants to implead all the other necessary parties and dispose the appeal and based on which the petitioner has come forward with this application by claiming that she is an innocent purchaser. As stated earlier the petitioner is not a party to the proceedings in OS 247/1996, the vendor of the petitioner was also not a party to the proceeding and the appellants in appeal in AS 33/2013 who are R1 and R2 are also not parties in the said suit as well as in the Final decree application. The respondent 1 and 2 in spite of direction given by the Hon'ble High Court in SA 663/2014 have not taken any steps to implead necessary parties in the suit. The documents in Ex.P6 patta in the name of the petitioner reveals that the petitioner purchased the portion of property covered under the final

decree in IA 289/2006 and therefore it is decided that the petitioner who is not party to the proceedings and claiming right through Ex.P1 to Ex.P6 is necessary parties to the proceedings. Apart from that the petitioner also claims to include R46 as proposed respondents No. 44 on the ground the 3rd respondent executed the settlement deed in favour of his daughter namely R 46 during the pendency of appeal before the Hon'ble High Court and for proper adjudication the R46 is also necessary party to the suit as R44 and it is decided the daughter of the 3rd respondent who is R46 is also necessary party to the proceedings as well as the petitioner are necessary party to the proceedings . Since the the petitioner filed an application in IA 5/2019 under order 1 Rule 10 CPC to implead the petitioner as proposed respondent in the appeal the I.A.5/2019 and the said application is allowed today and therefore it is necessary to re-open the appeal suit which is posted for further proceedings and therefore this point is answered accordingly.

In the result, the I.A.4/2019 is allowed . Considering the nature of the petition, both parties to bear their own cost.

Dictated to the steno typist, transcribed and typed by her , corrected and pronounced by me in open court, this the 23rd day of February 2021

Sd/- J. Selvanadhan
PRINCIPAL DISTRICT JUDGE,
Tiruvallur.

Petitioner's side Exhibits:-

Ex.P1 22.06.2000 Sale Deed Online certificate copy
Ex.P2 07.07.2000 Sale Deed Online certificate copy

Ex.P3 18.03.2005 Copy of General Power of Attorney
Ex.P4 10.02.2006 Copy of Sale Deed
Ex.P5 16.06.2006 Sale Deed Online certificate copy
Ex.P6 - Online Patta of M.Usharani
Ex.P7 03.08.2009 Land Plan approval of M.Usharani
Ex.P8 15.10.2009 Land Plan approval of M.Usharani
Ex.P9 15.10.2009 Land Plan approval of M.Usharani
Ex.P10 27.04.2016 Copy of Settlement Deed
Ex.P11 ---- Family Tree

Petitioners side witnesses:- Nil

Respondent side Exhibits :-Nil

Respondent side witness: Nil

Sd/- J. Selvanadhan
PRINCIPAL DISTRICT JUDGE,
Tiruvallur