

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.262 OF 2007  
(@ S.L.P.(C) NO.5735 OF 2005)

DHANLAKSHMI & ORS. . . . .APPELLANT

VERSUS

P. MOHAN & ORS. . . . .RESPONDENTS

J U D G M E N T

Dr. AR. Lakshmanan, J.

Leave granted.

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.

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 bonafide 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

3

appellants preferred the revision before the High Court. The

High Court also dismissed the revision on the ground 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 bonafide 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 court below. Aggrieved by the same,

the appellants have come before this Court.

Section 52 of the Transfer of Property Act reads thus:

"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

4

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.

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."

Section 52 deals with a transfer of property pending

suit. In the instant case, the appellants have admittedly

purchased the undivided shares of the respondents

5

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.

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.

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 defendants

6

nos.7, 8 & 9 in the Suit. The appellants will now be at

liberty to file the written statements in the pending suit.

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.

The Civil Appeal stands allowed on the above terms.

No costs.

.....J.

(Dr. AR. LAKSHMANAN)

7

.....J.

(V.S. SIRPURKAR)

New Delhi,

January 17, 2007.

8

ITEM NO.13

COURT NO.8

SECTION XII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).5735/2005

(From the judgement and order dated 06/01/2005 in CRP No. 357/2004 of The  
HIGH COURT OF MADRAS)

DHANALAKSHMI & ORS.

Petitioner(s)

VERSUS

P. MOHAN & ORS.

Respondent(s)

(With prayer for interim relief )

(FOR FINAL DISPOSAL)

Date: 17/01/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Petitioner(s)

Mr. V. Prabhakar, Adv.

Mr. Ramjee Prasad, Adv.

Mr. Subramani, Adv.

Mrs. Revathy Raghavan, Adv.

For Respondent(s)

Mr. R. Nedumaran, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The Civil Appeal stands allowed in terms of signed  
reportable

judgment placed on the file.

9

( A.D. Sharma )

( Phoolan Wati Arora )

Court Master

Court Master

(Signed Reportable Judgment is placed on the file)