



C.R.P.(MD)No.179 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
05.04.2023	24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.179 of 2020

and

C.M.P.(MD)No.1035 of 2020

Appulingam

... Petitioner

vs.

1.Chitravel

2.S.Senthilkumar

3.The Sub-Registrar,
Peravoorani,
Peravoorani Taluk,
Pattukkottai District Munsif,
Thanjavur.

4.The Tahsildar,
Peravoorani Taluk,
Pattukkottai District Munsif,
Thanjavur.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.06.2019, passed in I.A.No.77 of 2018 in O.S.No.30 of 2017, on the file of the III Additional District Court, Thanjavur @ Pattukkottai.



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For Petitioner

: Mr.M.R.S.Prabhu

For R1 and R2

: No Appearance

For R3 and R4

: Mr.M.Prakash

Additional Government Pleader

ORDER

The petitioner has filed this Civil Revision Petition against the fair and decreetal order dated 27.06.2019, passed by the learned III Additional District Judge, Thanjavur @ Pattukottai, in I.A.No.77 of 2018 in O.S.No. 30 of 2017.

2.By the impugned order, the learned Additional District Judge, Thanjavur at Pattukottai, has dismissed I.A.No.77 of 2018 filed by the petitioner under Order I Rule10(2) of C.P.C for impleading the respondents Nos.2 to 4 herein in O.S.No. 30 of 2017. The relevant portion of the impugned order reads as under:-

"6.தாவா சொத்தைப் பொருத்து வாதிக்கும் பிரதிவாதிக்கும் இடையே 05.05.2016ம் தேதி ஒரு கிரைய ஒப்பந்தம் ஏற்பட்டுள்ளது என்ற அடிப்படையில்தான் ஏற்றதை ஆற்றுக பரிகாரம் கோரி வாதியால் இந்த வழக்கு தாக்கல் செய்யப்பட்டுள்ளது. இதன்படி இந்த பரிகாரத்தை முடிவு செய்வதற்கு 05.05.2016ம் தேதி கிரைய ஒப்பந்தம் உண்மையானதா, அந்த கிரைய ஒப்பந்தத்தின்படி வாதி கிரையம் முடித்து பெறுவதற்கு விருப்பமாகவும், தயாராகவும் இருந்து வருகிறாரா, என்பதைத்தான் வழக்கில் நீதிமன்றம் முடிவு செய்ய வேண்டும். இந்த விஷயங்களை முடிவு செய்வதற்கு இந்த மனுவில் கண்ட நபர்களை வழக்கில் பிரதிவாதிகளாக சேர்க்க வேண்டிய அவசியம் இல்லை.

7. வழக்கு நிலுவையில் இருக்கும்போதுதான் இந்த மனுவில் கண்ட 2ம் எதிர்மனுதாரர் சொத்தை கிரையம் பெற்றுள்ளதாக



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தெரிவிக்கப்பட்டுள்ளது. அவ்வாறு வழக்கு நிலுவையில் இருக்கும்போது ஏற்பட்டுள்ள கிரையம் இந்த வழக்கை கட்டுப்படுத்தாது அந்த வகையிலும் இந்த மனு நிலைநிற்கதக்கதல்ல சொத்தை கிரையம் பெற்றவர்தான் சொத்தைப் பொருத்து உரிமை கோரி தனிப்பட்ட முறையில்தான் வழக்கை தாக்கல் செய்துகொள்ள வேண்டுமே தவிர அவரை இந்த வழக்கில் தரப்பினராக சேர்க்க வேண்டிய அவசியம் இல்லை. எனவே, மேற்கண்ட காரணங்களினால் இந்த மனுவை தள்ளுபடி செய்ய வேண்டும் என்று இந்த நீதிமன்றம் முடிவு செய்கிறது."

3.Heard the learned counsel for the petitioner. There is no representation on behalf of the respondents 1 and 2.

4.The petitioner is the plaintiff in O.S.No.30 of 2017, on the file of the III Additional District Court, Thanjavur @ Pattukkottai. The suit has been filed for specific performance of an obligation under agreement, dated 05.05.2016, which is said to have been executed between the petitioner and the first respondent herein [the defendant in the suit].

5.The said suit was instituted before the Principal District Court, Thanjavur, on 03.04.2017. Before summons were served in the suit, the first respondent conveyed the subject property to the second respondent/S.Senthilkumar, who is the nephew of the first respondent, vide sale deed, dated 20.07.2017.

6.Under these circumstances, the petitioner filed I.A.No.77 of 2018 to implead the second respondent herein as the second defendant and the official respondents



namely, respondents 3 and 4 as defendants 3 and 4 in the above suit.

7.The learned III Additional District Judge, Thanjavur @ Pattukkottai, has rejected I.A.No.77 of 2018 filed for impleading respondents Nos.2 to 4 as defendants in the above suit as unnecessary on the ground that the petitioner is required to establish the rights on the strength of the agreement, dated 05.05.2016 and therefore, it is not necessary to implead the other respondents as defendants in the above suit. The relevant portion of the impugned order has already been extracted in the beginning of this order.

8.The learned counsel for the petitioner submitted that during the pendency of the suit for specific performance filed by the petitioner in O.S.No.30 of 2017, the first respondent has sold the subject property to the second respondent on 20.07.2017 without prior permission of the Trial Court and therefore, for effective adjudication of the above said suit, respondent Nos.2 to 4 are necessary and proper parties.

9.The learned counsel for the petitioner has placed reliance on Section 52 of the Transfer of Property Act, 1882 and Order XXII Rule 10 of C.P.C. and submitted that the second respondent steps into the shoes of the first respondent pursuant to the sale effected by the first respondent to the second respondent on 20.07.2017. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in **Khemchand Shankar Choudhari and another vs. Vishnu Hari Patil and others**



reported in 1983 (1) SCC 18.

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10.The learned counsel for the petitioner has also placed reliance on the following case laws:-

(i) Pruthvirajsinh Nodhubha Jadeja (D) By Lrs. vs. Jayeshkumar Chhakaddas Shah and others, 2019 Supreme (SC) 1110.

(ii) Nivarti Govind Ingale and others vs. Revanagouda Bhimanagouda Patil, 1997 (1) SCC 475

(iii) Durga Prasad and another vs. Deep Chand and others, AIR 1954 SC 75

(iv) Srinivasiah vs. H.R.Channabasappa (D) By Lrs, 2017(12) SCC 821

11.I have considered the arguments advanced by learned counsel for the petitioner. I have also perused the impugned order and the plaint filed by the petitioner.

12.In my view, the Trial Court has committed an error in rejecting I.A.No.77 of 2018 filed under Order I Rule 10 of C.P.C. by the petitioner for impleading the respondents Nos.2 to 4 in O.S.No.30 of 2017. The determination of rights of the petitioner in a suit for specific performance cannot be staggered into different stages i.e. to determine whether petitioner has a right under the agreement dated 05.05.2016 and thereafter, to implead the proposed defendants namely respondent Nos.2 to 4



herein at a later stage of the proceedings.

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13.In Khemchand Shankar Choudhari and another vs. Vishnu Hari Patil and others [1983 (1) SCC 18], the Hon'ble Supreme Court in the context of Section 52 of the Transfer of Property Act, 1882 and Order XXII Rule 10 of C.P.C. held as under:-

"6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an Official Receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out. The Collector who has to effect partition of an estate under Section 54 of the Code of Civil Procedure has no doubt to divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the civil court? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the share of a deceased party in favour of his legatees. In the case of insolvency of a party, the Official Receiver may be allotted the share of the insolvent. In the case of



transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. A transferee from a party of a property which is the subject-matter of partition can exercise all the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of Section 54 of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject-matter has devolved, he would neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be carried out "in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares"

14.The decision of the Honb'le Supreme Court in **Thomson Press (India) Limited v. Nanak Builders and others [2013 (5) SCC 397]** by Hon'ble Mr.Justice M.Y.Eqbal, reads as under :-

"54. The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party defendant to the suit under Order I, Rule 10 CPC. I have no hesitation in concurring with the view that no one other than parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order I, Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order XXII Rule 10 of the CPC, which is as under:

"10.Procedure in case of assignment before final



order in suit. – (1) *In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.*

(2) *The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).*

A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party defendant and, if so, on what terms."

15. In Para 57 of the above judgment of the Supreme Court, it was summarized by his Lordship Hon'ble Mr. Justice T.S. Thakur, which concurs with the views of Hon'ble Mr. Justice M.Y. Eqbal, as follows:-

"57. To sum up:

57.1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.



57.2. The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

57.3. Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

57.4. The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other."

16.Further, by allowing the petitioner to implead respondents Nos.2 to 4, as defendants in O.S.No.30 of 2017, no prejudice would be caused. The petitioner can therefore seek a right to implead respondent Nos.2 to 4. If indeed Trial Court comes to a conclusion that the sale made to the second respondent on 20.07.2017 was intended to defeat the rights of the petitioner under the sale agreement dated 05.05.2016, it can use its discretionary power at that stage.

17.Records filed also indicate that petitioner appears to have issued a legal notice dated 06.03.2017 to the first respondent. The said notice precedes the institution of the suit on 03.04.2017. If the petitioner knew that the sale was already made, he would have impleaded the proposed party before instituting the above suit. I.A.No.77 of 2018 has been filed by the petitioner to implead respondent Nos.2 to 4 only after the filing of the written statement by the first respondent.

18.Therefore, I find sufficient reasons to interfere with the impugned order.



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Consequently, I.A.No.77 of 2018 in O.S.No. 30 of 2017, stands allowed. The petitioner shall carry out necessary corrections in the plaint filed in O.S.No.30 of 2017 and also file a clean copy of the plaint before the III Additional District Court, Thanjavur @ Pattukottai, within a period of 30 days from date of receipt of this order. The petitioner shall take steps for issuance and service of suit summons to the respondents 2 to 4, who have now been impleaded. The learned III Additional District Judge, Thanjavur @ Pattukottai, shall endeavor to dispose the suit as expeditiously as possible after trial and final argument, preferably within a period of 12 months of receipt of this order.

19.In the result, the present Civil Revision Petition is allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The III Additional District Judge,
Thanjavur @ Pattukkottai.

2.The Sub-Registrar,
Peravoorani,
Peravoorani Taluk,
Pattukkottai District Munsif,
Thanjavur.

3.The Tahsildar,
Peravoorani Taluk,

24.04.2023



Pattukkottai District Munsif,
Thanjavur.

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C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(MD)No.179 of 2020

DATED : 24.04.2023