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C.M.P(MD)No.664 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.04.2026

Pronounced on : 20.07.2026

CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

**C.M.P(MD)No.664 of 2026**

**in**

**A.S(MD)No.178 of 2023**

- 1.M.Saravanan,  
S/o.Murugan,  
Subramaniyan Chavadi Street,  
Vadakarai Town,  
Periyakulam Taluk,  
Theni District.
2. P.Kannan,  
S/o.Pitchaipillai,  
Door No.3/30B, Seenivasapuram,  
Shenbaganur,  
Kodaikanal Taluk,  
Dindigul District - 624 101.
3. K.Jeyalakshmi,  
W/o.M.Kannan,  
Door No.50, Poonthotta Street,  
Vadakarai, Periyakulam Town,  
Periyakulam Taluk,  
Theni District.
4. M.Selvan,  
S/o.Michael,  
Door No.2/97, Kudisaru Street,  
Vadakarai,  
Periyakulam Town and Taluk,  
Theni District.



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5. G.Ganesan,  
S/o.Gurusamy,  
NRT Street, Lakshmipuram,  
Thamaraikulam Village,  
Periyakulam Taluk,  
Theni District.

6. K.Annakamatchi,  
S/o.Kanthavelu,  
Door No.45/28, Vasuki Street,  
Ganapathy Nagar,  
Avaniyapuram,  
Madurai - 625 012.

7. M.Asikabanu,  
D/o.Mohammed Saleem,  
Door No.30/66, Pallivasal Street,  
Vadakarai, Periyakulam Town,  
Periyakulam Taluk,  
Theni District.

8.S.Nijay Fathima,  
D/o.Sulthan,  
D.No.105/1, Bagawathi Amman Kovil 1st Street,  
Vadakarai, Periyakulam Town,  
Periyakulam Taluk,  
Theni District.

9. S.Akbar Sulthan,  
S/o.Sulthan,  
D.No.2/21, Muvasarampattu Main Road,  
Madipakkam,  
Chennai - 600 091.

...Petitioners/3<sup>rd</sup> Parties

Vs.

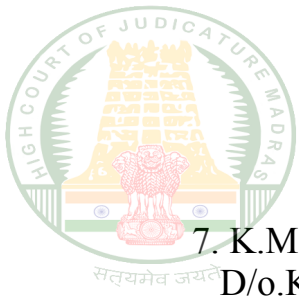


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Kathirvelsamy (Died)

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- 1.K.Balasubramanian,  
S/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.
2. K.Surya Pandian,  
S/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.
3. K.Pandima Devi,  
S/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.
4. K.Marutha Pandi,  
S/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.
5. K.Rajendra Sethupathi,  
S/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.
6. K.Rani,  
D/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.



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7. K.Mathu Bala,  
D/o.Kathir Velsamy,  
No.6, P.T.Rajan Road,  
3rd Street,  
Madurai District.

...Respondents 1 to 7/Appellants

S.S.Baskaran (Died)  
Pappammal (Died)

8. Chandra,  
W/o.Late.S.S.Baskaran,  
State Bank Colony,  
Kilavadakarai,  
Periyakulam Town,  
Theni District.

9. B.Suryanarayanan,  
S/o.Late.S.S.Baskaran,  
State Bank Colony,  
Kilavadakarai,  
Periyakulam Town,  
Theni District.

10.B.Bala,  
S/o.Late.S.S.Baskaran,  
No.6, Venkateswara Nagar,  
Adayar 1st Street,  
Chennai – 20.

...Respondents 8 to 10/Respondents

**PRAYER:** This Civil Miscellaneous Petition is filed under Order 1 Rule 10(2) of CPC., to implead the petitioners herein as respondents 4 to 12 in the above appeal in A.S(MD)No.178 of 2023.

|                 |                                                          |
|-----------------|----------------------------------------------------------|
| For Petitioners | : Mr.R.Suriya Narayanan                                  |
| For R1 to R7    | : Mr.S.Rajasekar<br>for M/s.Lajapathi Roy and Associates |
| For R8 to R10   | : Mr.V.George Raja                                       |



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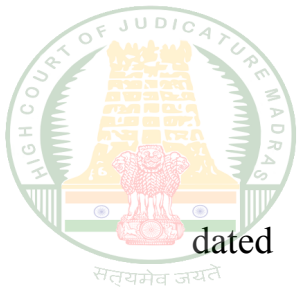
## **ORDER**

**WEB COPY** This Civil Miscellaneous Petition is filed under Order 1 Rule 10(2) of CPC., to implead the petitioners as respondents 4 to 12 in the first appeal in A.S(MD)No.178 of 2023.

### **2.The brief facts of the case:**

The respondents 8 to 10 herein, along with deceased plaintiffs S.S.Baskaran and Pappammal, filed a suit in O.S.No.8 of 2004 on the file of the Additional District and Sessions Court (erstwhile Fast Track Court), Periyakulam, against the defendants Kathirvelsamy and K.Balasubramanian for partition of suit properties. The defendants therein contested the suit. After contest and after consideration of evidence, the trial Court/Additional District and Sessions Court, Periyakulam passed judgment, dated 21.04.2011, granting preliminary decree in respect of suit properties except the items 7, 11,12 and 13 of 'A' Schedule. The defendants therein have not preferred any appeal. Hence, the plaintiffs, namely respondents 8 to 10 herein, along with the deceased plaintiffs S.S.Baskaran and Pappammal filed a petition in I.A.No.220 of 2017 in O.S.No.8 of 2004 on the file of the Additional District and Sessions Court, Periyakulam under Order 26 Rule 13 of CPC, for passing final decree in terms of preliminary decree,

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dated 21.04.2011. In the meanwhile, the original 1st defendant Kathirvelsamy died and his LR's were impleaded as respondents 3 to 8 in I.A.No.220 of 2017 in O.S.No.8 of 2004. The respondents in I.A.No.220 of 2017 in O.S.No.8 of 2004 contested the petition. After hearing both sides, the trial Court/Additional District and Sessions Court, Periyakulam allotted the share of suit properties to the respective plaintiffs by passing a final decree on 09.06.2023. Challenging the final decree, dated 09.06.2023, the respondents 2 to 8 in I.A.No.220 of 2017 in O.S.No.8 of 2004, i.e., 2nd defendant K.Balasubramanian and LR's of the deceased 1st defendant Kathirvelsamy preferred the present appeal in A.S(MD)No.178 of 2023 before this Court and the same is pending for disposal.

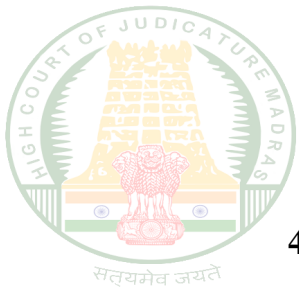
**2.1.** Pending disposal of the present appeal, the petitioners have filed this petition to implead them as respondents 4 to 12 in A.S(MD)No.178 of 2023, stating that they have purchased the properties in dispute from the respondents 8 to 10.

**2.2.** The respondents 1 to 7 have filed a detailed counter and strongly opposed the petition.



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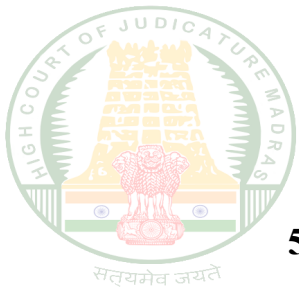
**WEB COPY 3.**The learned counsel for the petitioners submitted that the respondents 8 to 10 (respondents in appeal A.S(MD)No.178 of 2023) filed the original suit in O.S.No.8 of 2004 against the respondents 1 to 7 for partition. In that suit, a preliminary decree was passed on 21.04.2011. The first appeal in A.S(MD)No.60 of 2011 preferred against the preliminary decree was dismissed on 16.12.2017. Thereafter, final decree for partition in I.A.No.220 of 2017 in O.S.No.8 of 2004 was filed and certain portions in item Nos.1 to 9 were allotted to the respondents 8 to 10. The petitioners have purchased their properties under various sale deeds. Thereafter, the respondents interfered with the enjoyment of the petitioners over the properties, stating that there is an appeal pending against the final decree. Hence, the petitioners have filed the original suits in O.S.Nos.116 of 2025 and 120 of 2025 on the file of the District Munsif Court, Periyakulam, seeking for a permanent injunction. In fact, the petitioners have purchased the properties only after passing of final decree and before filing the present appeal. Therefore, the petitioners are necessary parties to the appeal and they may be added as respondents 4 to 12.



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4.Per contra, the learned counsel for the respondents 1 to 7 has vehemently contended that the petitioners have purchased the properties pendente lite. The respondents 1 to 7 have filed the present appeal against the final decree, dated 09.06.2023 within the limitation period and also issued notice of hearing in respect of the appeal. The respondents specifically raised grounds of appeal that the advocate commissioner before trial did not consider the physical features of the properties and that there are indivisible properties among the suit properties. Hence, this Court has passed an order directing the respondents 8 to 10 not to encumber the suit property and restrained them from putting up further constructions. The petitioners purchased the properties, which are the subject matter of the present appeal, from respondents 8 to 10. So, the petitioners purchased properties with lis pendens, and any order passed against respondents 8 to 10 will bind the so-called purchasers, i.e., the petitioners herein. Hence, the petitioners are not necessary parties, and the present petition is filed only to prolong the proceedings. Hence, the petition is liable to be dismissed. In support of his contention, the learned counsel for the respondents 1 to 7 has relied on the decision of the Hon'ble High Court in Jharkhand at Ranchi in the case of **Indra Nath Prasad Mehta /v/ Kunti Devi reported in 2018 SCC Online Jhar 1376.**



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5.The learned counsel for the respondents 8 to 10 has no objection in allowing this petition.

6.Heard both sides and perused the materials in this Civil Miscellaneous Petition.

7.The respondents 8 to 10 and deceased plaintiffs S.S.Baskaran and Pappammal filed suit for partition in O.S.No.8 of 2004 before the trial Court/Additional District Court, Periyakulam against two defendants Kathirvelsamy and K.Balasubramanian. It is an admitted fact that a preliminary decree for partition was passed in favour of the plaintiffs in O.S.No.8 of 2004 on 21.04.2011; that though the first appeal A.S(MD)No.60 of 2011 was filed, the same was dismissed on 16.12.2017; and that thereafter, the plaintiffs filed a petition in I.A.No.220 of 2017 in O.S.No.8 of 2004 for final decree for partition and that on consideration of report of Advocate Commissioner, the trial Court passed final decree on 09.06.2023. It is the definite case of the respondents 1 to 7 that since there are indivisible properties in suit properties and without considering the said fact, the Advocate Commissioner filed a report based on which the trial Court erred in passing final decree, hence, they preferred the present appeal in

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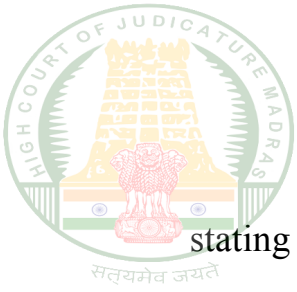
A.S.(MD)No178 of 2023. The petitioners filed this petition to implead them

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as respondents 4 to 12, as they purchased the allotted suit properties from the respondents 8 to 10, that too, before filing the appeal.

8. On perusal of records, it is clear that the trial Court has passed final decree for partition allotting specific share to the respondents 8 to 10. But, the fact remains that the respondents 1 to 7 preferred an appeal on 31.07.2023 challenging the order of final decree, dated 09.06.2023 and filed the Civil Miscellaneous Petition in C.M.P(MD)No.9960 of 2023 to stay the operation of final decree. From the perusal of records it is clear that the petitioners purchased the properties from the respondents 8 to 10 on various dates from 04.02.2022 to 27.10.2023. So, it is very clear that even prior to the passing of final decree, dated 09.06.2023 and prior to the filing of the present appeal, some properties were purchased by the petitioners from the respondents 8 to 10. Hence, it is very clear that after respondents 8 to 10 were entitled to their share in the suit properties and also allotted the share in the suit properties by way of final decree passed by the trial Court, the petitioners have purchased the property from out of the share allotted to the respondents 8 to 10 on various dates from 04.02.2022 to 27.10.2023. Though the appeal was filed on 31.07.2023 and the respondents 1 to 7 issued notice

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stating about filing of appeal and stay petition, this Court passed a stay order

directing the parties not to encumber the suit property only on 24.04.2024.

This Court has passed an order dated 24.04.2024 in C.M.P(MD)NO.9960 of 2023 in A.S(MD) No.178 of 2023 that ‘the respondents shall not encumber the property and they are restrained from handling the property in any way. Further constructions shall not be put up’. Further, after hearing both sides, this Court passed an order on 15.07.2024 in A.S.(MD)No.178 of 2023 as follows:

*“This Court is appointing Mr.Jerin Mathew as Advocate Commissioner. The Advocate Commissioner is directed to visit the theatre as well as the house and ascertain whether it is possible to implement the report submitted by the earlier Advocate Commissioner before the Final Decree Court. Objections are raised by both the parties stating that the house property is indivisible and the theatre was divided by earlier Advocate Commissioner by not considering the theatre construction which is existing in the land.”*

9.From the above facts and circumstances, the petitioners have not purchased the property pending litigation; but they have purchased from the



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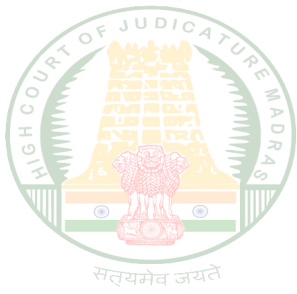
respondents 8 to 10 only after passing of the final decree for partition in their favour and some portion after filing of this appeal and stay petition.

The Hon'ble Supreme Court in **Thomson Press (India) Ltd. case** reported in (2013) 5 Supreme Court 397 clearly held that Order 1 Rule 10 of CPC empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit and held that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a Court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite.

**10.**The Hon'ble Supreme Court in **Thomson Press (India) Ltd. case** held as follows:

*“26.It would also be worth discussing some of the relevant laws in order to appreciate the case on hand. [Section 52](#) of the Transfer of Property Act speaks about the doctrine of lis pendens. [Section 52](#) reads as under:*

*“52.Transfer of property pending suit relating thereto. – During the pendency in any*



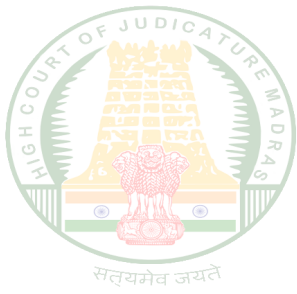
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*Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is 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. 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."*

*It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only*



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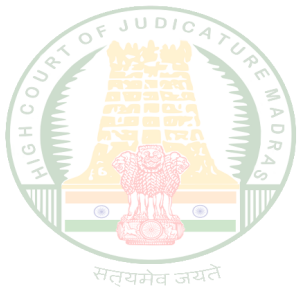


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*on the litigating parties but on those who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.....*

*29.The aforesaid [Section 52](#) of the Transfer of Property Act again came up for consideration before this Court in [Rajender Singh v. Santa Singh](#) and Their Lordship with approval of the principles [laid down in Jayaram Mudaliar v.Ayyaswami reiterated: \(Rajendar Singh case, SCC P.711 para 15\)](#)*

*“15.The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court’s power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property which are the subject matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object*



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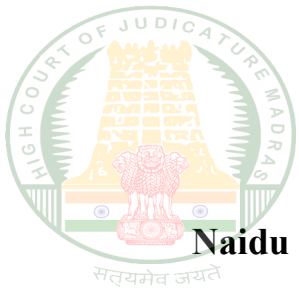
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*of a pending action from being defeated.*

*30. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of [Order 1 Rule 10 of the Code of Civil Procedure](#). Order 1 Rule 10 empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.*

**11.**In this case, though respondents 1 to 7 stated that the petitioners purchased the properties pendente lite and were bound by the direction imposed on the litigant, the fact remains that the petitioners purchased the properties from respondents 8 to 10 after the final decree for partition was passed. The respondents 8 to 10 have no objection to implead them as parties. Though the contesting respondents 1 to 7 object that the property is indivisible, they have not pleaded that the petitioners have purchased the property as indivisible property. The petitioners say that they have purchased some other immovable property other than the said indivisible property.

**12.**The Law of Equity is settled by the Hon'ble Supreme Court reported in **1995 (6) SCC 150 (K. Adivi Naidu & Ors vs E. Duruvasulu**



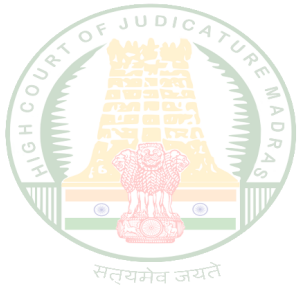
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**Naidu & Ors.),** it is held in paragraph No.5 as follows:

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*"5.Having considered the respective contentions, we are of the view that since the preliminary decree was allowed to become final, the trial Court need to give effect to it. It is settled law that alienees of the alinees have no right to equities. Equally, it is settled law that a coparcener has no right to sell his undivided share in the joint family property and any sale of undivided and specified items does not bind the other co-parceners. Since the specific properties were purchased prior to the institution of the suit for partition, though the appellants have no right to equities, it could be said that the respective share to which their principal alienor was entitled would be allotable to them as a special case .....".*

**13.**So, from the above facts and circumstances, the petitioners are necessary parties. However, any order passed against the respondents 8 to 10 will bind the petitioners as they purchased property from respondents 8 to 10 pendente lite, as per the decision relied on by the counsel for the respondents 1 to 7. Therefore, considering the above facts and circumstances of the case, this Court is inclined to allow this petition.



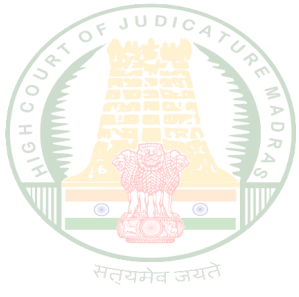
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**WEB COPY 14.**In the result, this Civil Miscellaneous Petition is allowed.

The Registry is directed to carry out necessary amendments in the Appeal Suit and list the same in the usual course.

**20.07.2026**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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**P.VADAMALAI, J.**

VSD

Pre - Delivery Order made in  
**C.M.P(MD)No.664 of 2026**  
**in**  
**A.S(MD)No.178 of 2023**

**20.07.2026**