

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL REVISION PETITION No.5479 of 2015

ORDER:

This civil revision petition is filed against the order dated 16.11.2015 in I.A.No.660/2015 in O.S.No.61/2011 on the file of the 1st Additional District Judge, Vizianagaram, by and under which, the learned Judge allowed the application filed by the 3rd parties/respondents 2 to 17 to come on record as defendants 2 to 17.

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

The petitioner/plaintiff filed O.S.No.61/2011 for declaration of title and for possession of the schedule property. In the said suit, the court below vide orders dated 12.02.2013 in I.A.No.2674/2011 granted *status quo* and also vide orders dated 03.03.2012 in I.A.No.2675/2011 appointed an Advocate-Commissioner to inspect the suit schedule property and note down its physical features. While so, the respondents 2 to 17 filed I.A.No.660/2015 seeking permission to come on record as defendants 2 to 17 in the said suit, stating that they have purchased the schedule property from the defendant-Bodda Jagadambha under registered sale deeds vide Doc.Nos.4667/2013 to 4672/2013, dated 23.11.2013 and they came to know the pendency of the suit between the petitioner/plaintiff and the defendant with regard to schedule property and hence they claim that they are necessary parties to the suit.

The petitioner/plaintiff filed counter stating that during pendency of the suit, that too, while the *status quo* order was in force, the schedule property was sold by the defendant-Jagadamba in favour of respondents 2 to 17 and hence the respondents 2 to 17 will not accrue any right over the schedule property and hence, they are not

necessary parties to the suit.

After hearing both sides, the Court below, while observing that the suit itself is filed for declaration and for possession of schedule property and now the implead petitioners/third parties were stepped into the shoes of the defendant having purchased the schedule property, and if the suit is decreed, the doctrine of *lis pendense* would apply and automatically the sale deeds would become null and void, and the question as to whether the plaintiff has title or whether the defendant has got title to the schedule property is to be decided in the suit, allowed the application, impleading the respondents 2 to 17 as defendants 2 to 17 in the suit. Questioning the correctness of the said order, the present revision is filed.

The learned counsel for the petitioner/plaintiff submits that the proposed parties who are shown as respondents 2 to 17 herein are all the subsequent purchasers from the 1st respondent/defendant during the subsistence of the orders of *status quo* and therefore, they cannot be impleaded. The learned counsel relied upon the judgment of this Court in ***Ramesh Chawla v. N.Srihari and others***^[1] in support of his contentions.

On the other hand, the proposed parties submit that they have purchased different bits of plots in the land which is the subject matter of the suit from the 1st respondent/defendant under registered instruments unaware about pending dispute and that it is they who were in possession of the property. It is further submitted that the suit is for declaration and recovery of possession and since the lands are in their possession they are necessary parties and behind their back, the petitioner/plaintiff cannot obtain a decree and try to dispossess the proposed parties. In order to avoid multiplicity of proceedings and future litigation in the matter, it is submitted that respondents 2 to 17 being the subsequent purchasers and being in possession of the

property in dispute, they are necessary parties and therefore, the trial Court has properly appreciated the aspect and impleaded them.

The petitioner/plaintiff filed O.S.No.61/2011 for declaration in respect of the plaint schedule property which comprises of an extent of Ac.1.89 cents in Rs.No.365/1 and Ac.11.15 cents in Rs.No.365/2, situated at Bogapuram village, Vizianagaram District.

Prior to filing the present suit, the petitioner/plaintiff filed O.S.No.983/2006 against the 1st respondent/defendant in respect of the same property for injunction simplicitor. That suit was dismissed for default. At the relevant point of time, the matter was pending before the revenue authorities. It is contended by the petitioner/plaintiff that the 1st respondent/defendant highhandedly occupied the plaint schedule land with all her muscle men and power and began laying roads across it and attempting to change its structure, probably with a view to convert into a business venture. Therefore, the plaintiff sought for declaration of his title and also possession.

The suit came to be filed in December, 2011. Along with the suit, the petitioner/plaintiff also filed I.A.No.2674/2011 under order 39 Rules 1 and 2 CPC praying the Court to grant interim injunction in his favour and against the respondent/defendant and her men restraining from making any changes, alterations to the plaint schedule land in any manner. By order dated 12.02.2013 the learned 1st Additional District Judge has allowed the application and directed both the parties to maintain *status quo* obtaining as on 03.03.2012 i.e. the date on which the Advocate-Commissioner executed the commission warrant.

Subsequently, the proposed parties, viz. respondents 2 to 17 have purchased different extents of land from out of the suit survey numbers under registered sale deeds dated 23.11.2013. They filed the petition to implead them as defendants 2 to 17 in the suit, which

was allowed by the trial Court.

The fact that emerges from the above is that the petitioner/plaintiff is out of possession of the property in question and he is seeking for relief of declaring his title and also for recovery of possession. According to the petitioner/plaintiff, as in December 2011 when the suit was filed, it is 1st respondent/defendant who was in possession of the plaint schedule lands. However, subsequently, in the year 2013, the proposed parties have purchased different extents of land out of the suit lands and they claim that they were in possession of the suit schedule lands.

The contention of the learned counsel for the petitioner is that since the proposed parties have purchased the land *pendente lite* and in the teeth of the injunction orders they cannot be shown the indulgence of the court by allowing them to come on record and contest the suit of the petitioner/plaintiff. In support of this contention, reliance is placed on the decision in ***Ramesh Chawla v. N.Srihari and others*** (1 supra), where the learned single Judge of this Court at paras-12 & 16 observed as under:

“12. There is no dispute that when the suit was pending before the Trial Court, the plaintiffs obtained an order of injunction restraining the defendants from alienating or in any manner changing the nature of the suit schedule property/properties. This Court also on an application, being C.M.P. No. 21880 of 2002, moved by the appellants passed an order of status quo. Though Respondents 16 and 17 in appeal were described as not necessary parties, the same having regard to Section [52](#) of the Transfer of Property Act, is not much of significance. Further, an order of injunction or order of status quo is an order in rem and it operates not only against the defendants, but against the entire world and also derivative title holders. In such a situation, a person

cannot be impleaded as defendant merely because such person would be incidentally effected by the judgment of the Trial Court or the Appellate Court. The purchaser of suit schedule property during the pendency of the suit or appeal, who purchased the property in contravention of Section [52](#) of the Transfer of Property Act cannot be impleaded as defendant. Further, a person who on his/her own volition purchased the property in contravention of the orders of the Court, cannot come before the Court and on grounds of equity seek impleadment. If such persons have any grievance against their vendors or desire to enforce the indemnity clause in the conveyance deed, they have to file separate suit against those vendors as and when the vendors got any share in the property. In case, the vendors are declared to be persons without any right to have a share in the property, the only remedy of the vendees during the pendency of the suit would be to sue the vendors for damages for conveying defective title. These principles are well settled.

16. Therefore, the applicant herein is neither necessary not proper party and cannot be impleaded in this appeal. The Full Bench decision of Madra High Court and the Division Bench decision of this Court relied on by the learned Counsel for the applicant do not lay down law different from the law as discussed above. The Full Bench of Madras High Court laid down that in case of alienation of undivided share either in whole or in certain specific item by coparcener of joint Hindu family, the right of alienee is to stand in the shoes of vendor and work out his rights in a suit for partition. Applying the same principle, the Division Bench of this Court allowed the appeal of a subsequent alienee who purchased the entire 'A' schedule property in a suit for partition among coparceners holding that an alienee enters the shoes of alienor and can maintain action at the stage of final decree or by way of separate suit. In the present case on

hand if the applicant is allowed to join as contesting respondents, the same would delay the proceedings and certainly would prejudice the parties to the suit especially petitioner purchased the property without obtaining necessary sanction under Section [52](#) of the Transfer of Property Act.”

The facts of the case before the learned single Judge in the above decision was that there was injunction restraining the defendants from alienating or in any manner changing the nature of the suit schedule properties. In the said decision, a reference is made to the decision of the Hon’ble Supreme Court in *Bibi Zubaida Khatoon v. Nabi Hassan Saheb* {AIR 2004 SC 173}, wherein the Hon’ble Supreme Court also observed that it is true that when the application for joinder based on transfer *pendente lite* is made, the transferee should ordinarily be joined as party to enable him to protect his interest.

In the instant case, there was no injunction as such restraining the 1st respondent/defendant from alienating the suit schedule lands. As already stated, the petitioner/plaintiff sought for an injunction pending suit restraining the 1st respondent/defendant from making any changes or alterations in the plaint schedule lands. The trial Court has directed both the petitioner/plaintiff and the 1st respondent/defendant to maintain *status quo* obtaining as on 03.03.2012. Since there is no injunction restraining the 1st respondent/defendant from alienating the suit schedule properties and since there is no intimation as such, so as to impute knowledge to the *pendente lite* purchasers, it cannot be said that they are not the *bona fide* purchasers of the suit schedule lands and therefore, they should not be impleaded as party defendants in the suit.

Learned counsel for the respondents 2 to 17 relied upon a decision of this Court in ***Racharla Thirupathi & others v. Gundala***

Shobha Rani & others^[2] wherein the learned single Judge of this Court held as under:

“In the instant case, the petitioners have specifically pleaded that they have purchased the plots carved out of Sy. No. 532 and 533. The suit is filed in respect of the land situated in Sy. No. 533/A2. For the mere fact that the petitioners did not specify as to in which of the two survey numbers their plots have fallen, they cannot be non-suited. This aspect needs to be necessarily adjudicated in the suit itself. Having regard to the averments on which the petitioners filed the application for theft; impleadment, it cannot be denied that they have direct interest in the subject matter of the suit. As to what extent they have interest and whether respondent No. 1/plaintiff is entitled to the grant of injunction or not, need to be examined in the suit. Even if the petitioners are not necessary parties, surely, they are proper parties. Besides respondent No. 1/plaintiff not suffering any distinct disadvantage due to the impleadment of the petitioners, the latter's impleadment in the suit would, indeed, avoid multiplicity of proceedings, in that, if the plaintiff succeeds in convincing the Court for granting a decree of injunction in the presence of the petitioners, such decree would bind the petitioners as well, obviating the necessity for the plaintiff to face separate civil proceedings that may be initiated by the petitioners if their application for impleadment is dismissed. On a careful analysis of the facts and circumstances of the case, I am of the opinion that the petitioners deserved to be impleaded as defendants in the suit.”

Learned counsel for the respondents 2 to 17 has also relied upon a decision of this Court in ***K.Srinivasulu v. Jaldusubramanyam Chettu & others***^[3] wherein the learned single Judge

at paras-17 and 18 held as under:

“17. Admittedly, the proposed parties have acquired interest in the entire property which is the subject matter of the appeal. In such a situation it is possible that the 1st respondent may not properly defend the appeal or he may collude with the appellant. Although the appellant was under no obligation to make respondent Nos. 2 to 6 as parties to the appeal, this Court has discretion to do so, by invoking Order XXII Rule [10](#) of the Code of Civil Procedure, 1908 as such a course of action would also protect the interest of the respondent Nos. 2 to 6. Therefore following the decisions in *A. Nawab John and others* (9 supra), *Thomson Press (India) Limited* (10 supra) and *Chappidi Subbareddy* (5 supra), I hold they ought to be impleaded as parties to the appeal. It is true that Section [52](#) of the Transfer of Property Act, 1882, would be attracted and the transferees of a property pending disposal of a suit or an appeal would be bound by the result of the suit or appeal. But on the said ground it cannot be held that they need not be impleaded in the appeal.

18. Therefore, I reject the contention of the 1st respondent that the appellant has no locus standi to implead respondent Nos. 2 to 6 in view of Section [52](#) of the Transfer of Property Act, 1882, and that the application A.S.M.P. should be dismissed.”

In the decision in ***K.Srinivasulu v. Jaldu Subramanyam Chettu & others*** (3 supra), several Authorities of the Hon’ble Supreme Court have been referred to. The learned single Judge of this Court has specifically referred to the decision in *A.Nawab John and others v. V.N.Subramaniyam* {(2012) 7 SCC 738}, where the Hon’ble Supreme Court at paras-19, 20 and 22 held as under:

“19. Such being the scope of Section [52](#), two questions arise: whether a *pendente lite* purchaser

(1) is entitled to be impleaded as a party to the suit;
(2) once impleaded what are the grounds on which he is entitled to contest the suit.

20. This Court on more than one occasion held that when a *pendente lite* purchaser seeks to implead himself as a party -defendant to the suit, such application should be liberally considered. This Court also held in *Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Anr.* : AIR 1958 SC 394, that, "justice requires", a *pendente lite* purchaser "should be given an opportunity to protect his rights". It was a case, where the property in dispute had been mortgaged by one of the Respondents to another Respondent. The mortgagee filed a suit, obtained a decree and 'commenced proceedings for sale of the mortgaged property'. The Appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section [146](#) of the Code of Civil Procedure) to be brought on record to defend her interest because, as a purchaser pendent elite, she would be bound by the decree against her vendor.

22. The preponderance of opinion of this Court is that a *pendente lite* purchaser's application for impleadment should normally be allowed or "considered liberally".

As already stated, placing reliance upon several authorities of the Hon'ble Supreme Court, more particularly, on the decisions in *Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others* {(2013) 5 SCC 397}, *Khemchand Shankar Choudhari v. Vishnu Hari Patil* {(1983) 1 SCC 18}, *Amit Kumar Shaw v. Farida Khatoon* {(2005) 11 scc 403} and *Rikku Dev v. Som Dass* {(1976) 1 SCC 103}, the learned single Judge held as above in paras-

17 and 18.

Applying the above Authorities to the facts of the present case, what is to be stated is that the respondents 2 to 17/proposed parties are necessary and proper parties to the suit and they are the persons who were in possession of the property in question, having purchased the same from the 1st respondent/defendant against whom the petitioner/plaintiff filed the suit for declaration and recovery of possession. Therefore, the interests of justice demands that the proposed parties should be impleaded and they should be given an opportunity to contest the claim of the petitioner/plaintiff, lest it may lead to multiplicity of proceedings.

The learned trial Court has appreciated all the aspects in proper perspective and allowed the application of the proposed parties to be impleaded as defendants 2 to 17 in the suit. The said order do not suffer from any illegality or irregularity, warranting interference. There are no merits in the revision petition and the same is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 30.12.2015

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[\[1\]](#) 2005(3) ALD 4

[\[2\]](#) (2013) 5 ALD 566

[\[3\]](#) (2013) 6 ALD 784