

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD)No.1397 of 2011

and

M.P.No.1 of 2011

P.K.Karuppan

..Petitioner

Vs.

1.Abhinaya

2.Sampath

3.Dhanalakshmi

4.S.K.Panneer Raja

..Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set the order and decreetal order in I.A.No.10 of 2011 in O.S.No.28 of 2008, dated 22.02.2011 on the file of the Additional District Court, (Fast Track Court) Namakkal.

For Petitioner : Mr.J.Jagadish

For RR1 : Mr.T.Dhanyakumar

For RR2 to R4 : Given up.

ORDER

This Civil Revision Petition is filed to set aside the order and decreetal order in I.A.No.10 of 2011 in O.S.No.28 of 2008,

dated 22.02.2011 on the file of the Additional District Court, (Fast Track Court) Namakkal.

2. The learned counsel for the petitioner submitted that the first respondent filed a suit in O.S.No.28 of 2008 for partition and separate possession of her alleged half share in the suit properties against the respondents 2 to 4. At this stage, the revision petitioner herein/third party filed an application in I.A.No.10 of 2011 to implead him as a party in the aforesaid suit, since the petitioner is the absolute owner of the property in S.No.237/4 and he is the proper and necessary party to the proceedings. The court below has erroneously dismissed the application seeking to implead the petitioner, on 22.02.2011. The Trial Court has erred in holding that he is the *pendente lite* purchaser and his purchase is hit by *lis-pendens*, which is factually incorrect. While the petitioner herein has purchased the properties in S.No.237/4 of "A" schedule, as per partition deed dated 07.05.1986 and "B" schedule property from Ram Kumar and others on 15.12.2009, only his wife has been shown as the second defendant in the suit and that the petitioner has not been impleaded as a party in the suit. The third respondent herein purchased the suit property under a sale deed dated 12.11.1992, registered as document No.2086 of 1992 in the office of the Joint Registrar, Namakkal. A detailed written statement has

been filed by the second defendant in the aforesaid suit.

3. In support of the petition, the revision petitioner has filed an affidavit in the Interlocutory Application by stating that in the year 2009, the third respondent herein had executed a registered settlement deed in favour of the Revision Petitioner with regard to the property, more fully described therein. By virtue of the settlement deed, the revision petitioner became the absolute owner of the said property, which is more fully described in Item - 3 in the plaint schedule of the said application .

4. According to the learned counsel for the petitioner, the Trial Court is wrong in dismissing the application on the ground that settlement deed executed by the third respondent in favour of revision petitioner was not produced before the court below. The reasons to dismiss the application is unsustainable in law and marking of documents is only at the time of trial. Hence, the rejection order passed by the trial court is liable to be set aside.

5. According to the learned counsel for the first respondent, the settlement deed was not produced by the revision petitioner and the execution of the settlement deed in favour of the petitioner is hit by law of *lis pendens*. Therefore, the Trial Court

has rightly dismissed the Interlocutory Application.

6. As far as the respondents 2 to 4 are concerned, they are given up. Heard Mr.J.Jagadish, learned counsel for the petitioner, and Mr.T.Dhanyakumar, learned counsel for the first respondent and perused the records and the contents of the materials available on record.

7. The first respondent filed a suit in O.S.No.28 of 2008 for partition and separate possession. In the aforesaid suit, the revision petitioner filed an I.A.No.10 of 2011 in O.S.No.28 of 2008 to get himself impleaded as fourth defendant in the suit. In the aforesaid suit, the claim of the revision petitioner is that, by virtue of the settlement deed executed by the third respondent in favour of the revision petitioner, he has become the absolute owner of the property in so far it relates to item No.3 in the plaint schedule property. Hence, he is entitled to be impleaded as a party in the aforesaid suit and marking of the documents arises only at the time of the trial. Further, the dispute in the suit would be resolved only in the presence of all and in order to avoid multiplicity of proceedings, the impleadment has to be ordered. Therefore, the findings of the trial court is unsustainable in law and the same is liable to be set aside.

8. Order 1 Rule 10(2) reads as follows:

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

The Hon'ble Supreme Court in ***Thompson Press (India) Ltd., Vs. Nanak Builders & Investors Ltd., & Others*** reported in **(2013) 5 SCC 397** at paragraphs 29, 30 and 31 has held as follows:

29. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in Rajender Singh Vs. Santa Singh and Their Lordships with approval of the principles laid down in Jayaram Mudaliar V.Ayyaswami reiterated: (Rajender 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 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.

31. Order 1 Rule 10 CPC reads as under:

"10. Suit in name of wrong plaintiff-

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties: The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

In Devaki Thiyagarajan Vs. Ahamed & Others reported in **2015**

(4) CTC 293, the Division Bench of this Court at paragraphs 54,62,63,71,71 has held as follows:

54. In so far as the present Appeal is concerned, we would like to place it on record that the Principle of *lis pendens* embodied in Section 52 of the T.P.Act being a Principle of Public Policy, no question of good faith or *bona fide* arises. The principle underlying Section 52 is that a litigating party is exempted from taking Notice of a title acquired during the pendency of the litigation. The mere pendency of a Suit does not prevent one of the parties from dealing with the property constituting the subject matter of the Suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the

other party under any Decree, which may be passed in the Suit unless the property was alienated with the permission of the Court.

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

63. Under Order 1, Rule 10, C.P.C, a party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the Suit and then he can be impleaded.

71. As aforestated in the earlier paragraphs, the Respondents 2 to 5/Plaintiffs 1 to 4 have not alienated the Suit property in favour of the Appellant/proposed 5th Plaintiff with the permission of the Court. However, as argued by Mr.R.Thiyagarajan, since the Respondents 2 to 5/Plaintiffs 1 to 4 have allegedly sold the Suit property in favour of the Appellant/proposed 5th plaintiff, they might not show much interest or due diligence in conducting the trial of the Suit. Even if it is presumed that the Appellant/proposed 5th Plaintiff is not included as one of the co-Plaintiffs to prosecute the Suit as against the Respondents 6 to 9, she would definitely approach the Court of law with a new Suit, which would pave way for the multiplication of proceedings and only for the

purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided that the Appellant/proposed 5th Plaintiff could be allowed to be impleaded as the 5th Plaintiff.

71(a). Further, we do not see any collusiveness between the Appellant/proposed 5th Plaintiff and the Respondents 2 to 5/Plaintiffs 1 to 4. Section 52 of T.P.Act is a substantive law, whereas the provisions of Order 1, Rule 10(2) of C.P.C., is a procedural law. Even though the Respondents 2 to 5/Plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present Suit, Order 1, Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as Plaintiff or Defendant upon or without any Application of either party, whose presence appears to be necessary in Order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit.

9. The Object of the Order 1, Rule 10(2) C.P.C, to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all and in Order to avoid multiplicity of proceedings. In the light of the aforesaid decisions, in the interest of justice and considering that the suit is of the year 2008, I am inclined to pass the following orders:

(a)The order passed in I.A.No.10 of 2011 in O.S.No.28 of 2008 pending on the file of the Additional District Court, Fast Track Court, Namakkal dated 22.02.2011, is hereby set aside.

(b) The Trial Court is directed to implead the revision petitioner as fourth defendant in O.S.No.28 of 2008 and is further directed to dispose of the suit in O.S.No.28 of 2008 pending on the file of Additional District Court(Fast Track Court) Namakkal on or before 31.10.2016, after carrying out the necessary amendment in the plaint.

(c) Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20 .04.2016

gv/ avr

Index :Yes/No
Internet:Yes/No

To

The Additional District Court,
(Fast Track Court)
Namakkal.

D.KRISHNAKUMAR,J.

gv/avr

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