

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.1507 of 2011 and
M.P.No.1 of 2011 and
Caveat Petition No.1598 of 2011**

S.N.Arumuga gounder

.. Petitioner

Vs.

1.Sadasivam
2.Palanisamy
3.S.Palanisamy
4.S.K.Sadhasivam
5.N.Sri Ganapathi

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.03.2011 made in I.A.No.61 of 2011 in O.S.No.190 of 2004, on the file of the First Additional Sub-Court, Erode.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.S.Saravanan

ORDER

The case of the revision petitioner is that he has filed the above suit in O.S.No 190 of 2004 against the respondents 1 and 2 herein praying for a declaration of a Registered Sale deed dated 29.12.2000 as null and void. The said sale deed was executed by the 1st respondent in favour of the 2nd respondent herein.

2.The case of the revision petitioner in brief is that earlier the revision petitioner's sons namely Siva Shankar and Radha Krishnan as plaintiffs have filed a suit for partition in O.S.No.714 of 2001 against the revision petitioner and some other co sharers/defendants. Pendente lite, some portion of suit property stood illegally and unlawfully alienated by the 3rd Defendant/ 1st respondent herein namely Sadasivam in favor of Palanisamy, the 2nd respondent herein vide a registered sale deed dated 29.12.2000. Whereupon the revision petitioner filed the above suit in O.S.No.190 of 2004 praying to declare the above deed dated 29.12.2000 executed in favor of Palanisamy, the 2nd respondent herein as null and void. Being so, now the 2nd respondent herein sold that piece of property to respondents 3 to 5 herein vide a registered sale dated 29.12.2000. Thus the

respondents 3 to 5 are subsequent purchasers of a portion of suit property in O.S.No.714 of 2001. Therefore the respondents 3 to 5 herein being the subsequent purchasers of a property in lis pendens got impleaded themselves in the said earlier suit in O.S.No.714 of 2001, by filing impleading petitions. Hence the revision petitioner has filed the above O.S.No.190 of 2004 against the respondents 1 and 2 to declare such illegal sales as null and void. Since the property now is sold and it is claimed to be under the possession of the respondents 3 to 5, the revision petitioner filed I.A.No.61 of 2011 under Order 1 Rule 10(2) r/w 151 CPC praying to implead the alleged subsequent purchasers in the above suit as defendants 3 to 5. However, the impleading petition was disallowed by an order dated 24.03.2011 by the trial Court by holding that impleading application is made belatedly and if the revision petitioner succeeds the suit in nullifying the sale deed dated 29.12.2000 then it is automatic all the subsequent deeds will be null and void. Therefore the respondents 3 to 5 the alleged subsequent purchasers of the pendent lite suit property is not a necessary party to the present suit in O.S.No.190 of 2004. The said order of dismissal of revision petitioner's application to implead the respondents 3 to 5 is challenged herein.

3.I heard Mr.N.Manokaran, learned counsel appearing for the

petitioner and Mr.S.Saravanan, learned counsel appearing for the respondents.

4.The learned counsel for the revision petitioner contended that the trial court erred in dismissing the application filed Under Order 1 Rule 10(2) r/w 151 CPC, despite noting the respondents 3 to 5 herein being the subsequent purchasers, purchased the suit property while pending suit. Hence they are just and necessary parties to the suit. The Trial court failed to take into account that the respondents 3 to 5 claiming title over suit property has on own motion impleaded themselves in the earlier suit in O.S.No.714 of 2001, by filing impleading petitions. Since the respondents 3 to 5 claims in O.S.No.714 of 2001 that the suit property is in their possession as subsequent purchasers they are just and necessary parties. Therefore the impleading of the respondents 3 to 5 is indispensable.

5.In this regard the learned counsel for revision petitioner rely upon a reference made by this Court to a larger bench in **C.R.P (PD) 1337 of 2009 reported in 2014(4) CTC 814, in the matter of V.L.Dhandapani & Ors Vs Revathy Ramachandran & Ors**, wherein a reference was sought as to whether a Transferee pendente lite can be added as party in a suit for specific performance. It was answered

that on taking account of the facts and circumstance, for proper and complete adjudication the subsequent purchaser can be impleaded as necessary party.

6.Per contra the learned counsel for the respondents submitted that the application is filed belatedly, further the respondents 3 to 5 are not required as parties in the present suit. Further the respondents 3 to 5 have not filed any impleading petitions. Only on appreciation of the said facts the Trial court has rightly dismissed the revision petitioner's application to implead the respondents 3 to 5.

7.On perusal of the Typed set of papers and the Plaint in O.S.No. 714 of 2001, the suit for partition, it is noticed that the respondents 3 to 5 herein has impleaded themselves as defendants 5 to 7 vide the order of trial Court in I.A.773 of 2009 dated 09.11.2009. It is further found that the respondents 3 to 5 have claimed title and pleaded they are in possession of a piece of suit property by virtue of an alleged Sale deed dated 07.09.2007 came to be executed Lis pendens. Only thereafter the Revision petitioner is put to a condition to implead them in the present suit in I.A.No.61 of 2011 in O.S.No.190 of 2004 as subsequent purchasers. Thus, this Court finds that the respondents 3 to 5 are claiming express title over some of

the suit properties. The respondents 3 to 5 have defended the above suit in O.S.No.714 of 2001. It is noteworthy that both the suits in O.S.No.714 of 2001 and O.S.No.190 of 2004 are pending before the same trial Court.

8.At this juncture, it is needless to say where a complete and effective adjudication cannot be done without a party, such party is a necessary party. Only the presence of such parties will enable the court to adjudicate the subject issue more effectually and completely.

9.It is settled law that a transferee pendente lite can be added as a party though the plaintiff is under no obligation to make a lis pendens Transferee a party, under Order XXII Rule 10. The relevant factors are to be considered by the courts is to render complete justice and effective adjudication. The courts have to endeavor at avoiding multiplicity and protracted litigations, besides avoiding conflicting decisions.

10.Whereas in the case on hand the respondents claiming them as subsequent purchasers has impleaded on their own motion, in respect of this very same suit property in a pending suit in O.S.No.714 of 2001, hence this Court finds that the respondents 3 to

5 are required in the latter suit in O.S.No.190 of 2004, for proper and complete adjudication of the subject issue.

11.In so far as the contention of the respondents that they are not proper parties and have not filed any impleading applications, this court would like to emphasis a decision of Delhi High Court in the case of **Ramji Lal Mohinder Kumar Vs Naresh Kumari**, reported in **AIR 1984 Del 95**, wherein it was held that a person whose presence is necessary may be joined as a party to the suit, even if he himself does not apply for being made a party.

12.In the light of the above legal prepositions and the facts of the case on hand, I am of the considered opinion that the impleading application is liable to be allowed and the order of the trial Court is set aside.

13.In the result:

(a) the Civil revision Petition is allowed by setting aside the order passed in I.A.No.61 of 2011 in O.S.No.190 of 2004, dated 24.03.2011, on the file of the Additional Sub-Court, Erode, under Order 1 Rule 10(2) of CPC and

the proposed parties are hereby impleaded as defendants
3 to 5 in the suit;

(b) the trial Court is directed to expedite the suit
after amending the plaint and after filing the written
statement and additional written statement by the
defendants;

(c) thereafter, the trial Court is directed to dispose
the suit in O.S.No.191 of 2004 within a period of four
months thereafter, by giving fair opportunities to both
parties. No costs. Consequently, connected
miscellaneous petitions are closed.

21.12.2016

Note:Issue order copy on 25.05.2017
Internet:Yes
Index:Yes

vs

To

The First Additional Sub-Court,
Erode.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery Order made in
CRP(PD)No.1507 of 2011 and
M.P.No.1 of 2011 and
Caveat Petition No.1598 of 2011**

21.12.2016

<http://www.judis.nic.in>