

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.1100 of 2012
and
M.P.No.1 of 2012**

R.Varadharajan

.. Petitioner

Vs.

1.Shantha

2.Kumaravel

3.Chakravarthi

4.Kaliappan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Final Orders dated 15.02.2012 passed in I.A.No.37 of 2012 in O.S.No.729 of 2011, on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.R.Singaravelan (for R1)

ORDER

It is case of the revision petitioner that he as a plaintiff filed a suit against the respondent herein in O.S.No.729 of 2011 on the file of the Principal District Minsif Court, Salem for permanent injunction. The plaintiff purchased the suit property in the name of his wife, 1st defendant under a registered sale deed dated 06.02.1974. Now, there is a misunderstanding between the plaintiff and his wife, the 1st defendant. The 1st defendant, pending suit sold the suit property by virtue of registered sale deed dated 05.12.2011 to one Mr.Murugan and his wife Sarasu, the proposed defendants 5 and 6. Therefore, the revision petitioner took out an application in I.A.No.37 of 2012 to implead the proposed defendants 5 and 6 namely Murugan and Sarasu. The respondents herein resisted the said application by filing counter affidavit.

2.The learned Principal District Munsif after conducting enquiry in the impleading application was pleased to dismiss the same by order and decree dated 15.02.2012 on the ground that the transaction is taken place during the pendency of suit and the same is hit by the principles of lis-pendens. Therefore, if any decree or order will be

passed in the suit it will be bind the subsequent purchaser also. Aggrieved over the same, the revision petitioner has filed this civil revision petition.

3.I heard Mr.R.Nalliyappan, learned counsel appearing for the petitioner and Mr.R.Singaravelan, learned counsel appearing for the 1st respondent and perused all the relevant records.

4.This revision is filed challenging the dismissal order passed in the impleading application. According to the revision petitioner, the suit property was purchased by him in the name of his wife, the 1st respondent/defendant herein, since, he was in police department. Due to some misunderstanding between the revision petitioner and his wife, the 1st respondent herein and by taking advantage of the same the 1st respondent herein sold the suit property to and in favour of the proposed defendants 5 and 6 by virtue of a registered sale deed dated 05.12.2011 during the pendency of the suit. Though the said sale would hit by the principle of lis-pendens, in order to get an effective adjudication and binding judgment in the above said suit and also to avoid multiplicity of proceedings, the transferee pendent lite can be ordered as party to the suit. The subsequent purchaser of the suit

property can be impleaded even in a suit for permanent injunction.

5. In this context, it is useful to refer the following decisions of this court reported in, **2015(4) CTC 293** in **Devaki THiyagarajan – Vs- Ahamed and others**, wherein in paras 54, 62, 63 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 Transfer of Property 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), CPC 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 Order1, Rule 10, CPC 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.”

6.The other Judgment of this court reported in, **2014 (4) CTC 814** in ***V.L.Dhandapani and others –Vs- Revathy Ramachandran and others***, wherein in paragraph 15 held as follows:

“15. Now coming to the reference made, we are of the view that in the light of the decision rendered in Thomas Press (India) Ltd –Vs- Nanak Builders and Investors Private Ltd and others, 2013 (2) CTC 104(SC): 2013(5) SCC 397, that a transferee pendent lite can be impleaded as party to the suit. However, we make it clear that the question as to whether such a party is entitled to be impleaded will have to be decided from the facts of the case. Accordingly, the reference sought for is answered.”

7.The trial Court should looked in to this case with the judicial view since impleading the proposed parties as defendants 5 and 6 would not prejudiced any way to the other defendants but it will curtailed the multiplicity of proceedings. Therefore, the Courts below must have cautious while passing orders in the impleading application.

8.In view of the foregoing discussion and in the light of the above said principles laid down in the judgments referred supra, I am of the considered view that this civil revision petition is liable to be allowed by setting aside the order in I.A.No.37 of 2012 and accordingly it is allowed.

9.In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.37 of 2012 in O.S.No.729 of 2011, dated 15.02.2012 passed by the Principal District Munsif, Salem;

(b) the learned Principal District Munsif, Salem, is

directed to implead the proposed parties as defendants 5
and 6 and dispose of the suit within a period of six months
from the date of receipt of a copy of this order. No cost.
Consequently, connected miscellaneous petition is closed.

24.11.2016

Note: Issue order copy on 20.04.2017
Internet: Yes
Index: Yes

vs

To

The Principal District Munsif Court,
Salem.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.1100 of 2012
and
M.P.No.1 of 2012**

24.11.2016

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