

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.1369 of 2012
and
M.P.No.1 of 2012**

1.Karunanithi
2.Senthilkumar .. Petitioners

Vs.

1.Rajendran
2.Rajeswari
3.Jegannathan
4.Shakila
5.Minor Ajith Balaji
(Represented by Guardian Advocate R.Selvam)

6.Amudha .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif-cum-Judicial Magistrate Court at Paramathi, dated 09.03.2012 in I.A.No.779 of 2008 in O.S.No.109 of 2008.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.C.Jagadish

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and Decreetal order of the District Munsif Cum Judicial Magistrate Court at Paramathi, dated 09-03-2012 in I.A.No.779 of 2008 in O.S.No.109 of 2008.

2.The instant Civil Revision Petition is filed by the revision petitioners as against the dismissal of their impleading petition. The revision petitioners as Plaintiffs filed a suit for partition and separate possession against the respondents 1 to 5 herein in O.S.No.109 of 2008 before the District Munsif-cum-Judicial Magistrate at Paramathi. The revision petitioners filed the suit for partition and in the cause of action for filing the suit which arose according to the plaintiffs on 27.07.2008. On 01.08.2008 the 3rd respondent herein through his power agent Shanmugam sold the suit property to the proposed party/6th respondent herein. Therefore the revision petitioners took out an application in I.A.No.779 of 2008 to implead the purchaser of

the suit property as 6th defendant in the suit.

3.The proposed party filed counter affidavit stating that she is the bonafide purchaser for a valid sale consideration and she did not know about the pendency of suit filed by the revision petitioners against her vendor. The other respondents have also filed their respective counter affidavit and resisted the impleading application. The trial court upon considering the case, was pleased to dismiss the impleading application by holding that the proposed party is not a necessary party to the suit proceeding and the dispute with regard to the title is fought between the plaintiffs and defendants. Challenging the above said dismissal order the revision petitioners have filed this Civil Revision Petition.

4.I heard Mr.P.Valliappan, learned counsel appearing for the petitioners and Mr.C.Jagadish, learned counsel appearing for the 6th respondent and perused the records.

5.It is revealed from the records that the Plaintiffs' application to implead the purchaser of the suit property pendent lit was dismissed by the trial court on the ground that if the Plaintiffs get a decree for

partition, the purposed party/the 6th respondent herein automatically loose her right in the suit property and therefore without the presence of the proposed party, the court can pass a effective decree.

6.The learned counsel for the revision petitioners stressed his argument that the Trail court has failed to follow the principles governing in the matter of impleading application. It is true that the purchase of the suit property by the 6th respondent herein during the pendency of the suit will hit by the principles of *lis pendens* as per Section 52 of Transfer of Property Act. But if the suit is decreed, the sale of undivided share of the suit property by co-sharers during the pendency of the suit and the purchaser of the suit property would be entitled for alienor's share in equity. Therefore the learned counsel for the revision petitioners contended that they would be necessary and proper party to the above suit.

7.In this context the learned counsel for the revision petitioner draw the attention of this court to the Judgment of the Hon'ble Apex Court and our High Court. In the case of ***Dhanalakshmi and Ors. Vs. P.Mohan and Ors.*** reported in ***A.E.R 2007 S.C 1062*** wherein at paragraph 5 and 6 it is held as follows:

"5. Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of the respondents Nos.2, 3, 4 and 6. It is not in dispute that the first respondent P.Mohan has got an undivided share in the said suit property. Because of the purchase by the appellants of the undivided share in the suit property, the rights of the first respondent herein the suit or proceeding will not affect his right in the suit property by enforcing a partition. Admittedly, the appellants, having purchased the property from the co-sharers, in our opinion, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings. In our opinion, the appellants are necessary and proper parties to the suit, which is now pending before the Trail Court. We also make it clear that we are not concerned with the other suit filed by the mortgagee in these proceedings.

6. We, therefore, set aside the order passed by the High Court and order the application for implement filed by the appellants herein and array them as party defendants Nos.7, 8 and 9 in the suit. The appellants will now be at

liberty to file the written statements in the pending suit”.

8. In the case of **S. Krishnan Vs. Rathinavel Naicker and 22 Ors.**, wherein this court has held that a plaintiff is the *dominus litus* in a suit and he is free to implead any one as the defendant in the suit instituted by him. But it does not mean that he can do so at his sweet will. In the said Judgment it is further held that what are all the tests to be applied for determining the right of the party to implead another, in pending suit and the tests are categorized here under:

- “a. If without his presence no effective and complete adjudication could be made;
- b. If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;
- c. If there is a cause of action against him;
- d. If the relief sought in the suit or other proceedings is likely to be made binding on him;
- e. If the ultimate outcome of the proceedings is likely affect his adversely;
- f. If his role is really that of a necessary witness but is sought to be camouflaged as a Necessary party.”

9. Per contra, the learned counsel for the 6th respondent would submit that she is a bonafide purchaser for a value and she did not know about the pendency of the suit filed by the revision petitioner. Further, the proposed party has purchased the suit property even before serving summon to the defendants in the suit. The learned counsels for the 3rd respondent would submit that even assuming that he sold the suit property pending suit and the same would hit by lis pendence. Therefore the 6th respondent herein is not a necessary party to the suit and without her presence the suit could be completely and effectively adjudicated.

10. By applying the ratio laid down in the above judgments to the present case on hand, admittedly the 6th respondent herein having purchased the property from the 3rd respondent herein who is one of the co-sharer, in my considered opinion, she is necessarily to be added as party to the suit to have effectively and completely adjudicate upon the issues involved in the above suit.

11. For the foregoing reason and in the light of the Judgments referred above, I am of the considered view that the order of the trial

Court in dismissing the impleading petition filed under Order 1, Rule 10 C.P.C cannot be sustained and the trial court has committed an error in dismissing the impleading application without considering the settled legal principle involved therein and so, it is liable to be set aside.

12.In the result, this Civil Revision Petition is allowed and the order and decree passed made in I.A.No.770 of 2008 in O.S.No.109 of 2008, dated 09.03.2012, on the file of the District Munsif-cum-Judicial Magistrate Court at Paramathi, is hereby set aside. No cost. Consequently, connected miscellaneous petition is closed.

09.12.2016

Note:Issue order copy on 27.07.2017.

Internet:Yes

Index:Yes

vs

To

The District Munsif-cum-Judicial Magistrate Court,
Paramathi.

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M.V.MURALIDARAN, J.

VS



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