

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.10.2016
Delivered on : 21-10-2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.2314 of 2013 &
M.P.No.1 of 2013

1. K.Selvam
2. K.Mani
.... Petitioners

vs

1. K.Marimuthu
2. M.Chidambaram
3. Thopaa Goundan
4. A.Gunasekaran
.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 8.2.2013 made in I.A.No.1429 of 2012 in O.S.No.250 of 2005 by the learned District Munsif, Sathyamangalam.

For petitioner : Mr.N.Manokaran

For respondents : Mr.M.Guruprasad for R1 & R2
No appearance for R3 & R4

ORDER

This Civil Revision Petition is directed against the order of the learned trial Judge, dated 8.2.2013 made in I.A.No.1429 of 2012 in O.S.No.250 of 2005, in and by which, the application filed by the petitioners herein, under Order 1 Rule 10 r/w 151 CPC, seeking to implead the proposed parties as defendants 3 and 4 in the suit, came to be dismissed.

2. The case of the petitioners/plaintiffs is that they had entered into a sale agreement on 17.2.2005 with the defendants who are respondents 1 and 2 herein and the suit was filed for specific performance in furtherance of the said sale agreement.

3. It appears that during the pendency of the suit, the defendants 1 and 2 had sold the suit property to 3rd parties. Since the property in question had been transferred to 3rd parties during the pendency of the suit, the petitioners/plaintiffs moved an interlocutory application (being I.A.No.1429 of 2012), seeking permission to implead subsequent purchasers. The said application was taken up for hearing on 8.2.2013 and the same was dismissed on the ground that the sale in favour of the proposed purchasers was hit by doctrine

of *lis pendens* and therefore, there was no necessary to implead them as defendants in the suit.

4. Heard both sides and perused the entire materials available on record.

5. Learned counsel appearing for the petitioners contended that the purchasers *pendente lite* are the necessary parties for effective adjudication of the suit and in support of his contention, he relied upon two decisions, viz., in the matter of "**A.Nawab John and others versus V.N.Subramaniam**" reported in (2012) 7 SCC 738; and in the matter of "**V.L.Dhandapani and others versus Revathy Ramachandran and others**" reported in 2014(4) CTC 814.

6. In "A.Nawab John" case (cited supra), the Hon'ble Supreme Court, while *inter alia* dealing with other other issues, has dealt the issue as to whether *pendente lite* purchasers ought to be impleaded in the suit or not? The preponderance of opinion of the Hon'ble Supreme Court is that a *pendente lite* purchaser's application for impleadment should normally be allowed or considered liberally. Particularly, in the present case, the transfer of property that had taken effect during the pendency of the suit, was the subject matter of the suit itself.

7. In "V.L.Dhandapani case" (cited supra), a Division Bench of this Court has held that the transferee *pendente lite* can be impleaded as a party to the suit proceedings. The learned Bench has come to the conclusion in respect of the issue on hand on the basis of yet another decision of the Hon'ble Supreme Court in "Thomson Press (India) Ltd. Versus Nanak Builders and Investors Private Ltd. And others" reported in 2013(2) CTC 104 (SC).

8. The impleadment of transferee *pendente lite* will only protect the interest of all concerned in respect of subject matter of the suit. When such is the case, the dismissal of the application moved by the petitioners for impleadment of the transferees *pendente lite* by the learned trial Judge, in my view, is not in order and contrary to the legal position as illustrated above.

9. Therefore, the impugned order of the trial Judge, dated 8.2.2013 dismissing the application filed under Order 1 Rule 10 r/w 151 CPC, seeking to implead the proposed parties as defendants 3 and 4 in the suit, is liable to be set aside as it is contrary to law and on facts. Accordingly, the same is set aside.

For the foregoing reasons, the Civil Revision Petition is allowed.
No costs. Consequently, connected MP is closed.

Suk

21-10-2016

Index: Yes/No

Internet: Yes/No

V. PARTHIBAN,J.,

suk

Pre delivery order in
CRP(PD)No.2314 of 2013

21-10-2016

PRE DELIVERY ORDER IN CRP(PD) NO.2314 OF 2013

TO

THE HON'BLE MR.JUSTICE V.PARTHIBAN

Most respectfully
submitted

(S.Ubedulla Khadri), PA