

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.3491 of 2013

and

M.P.No.1 of 2013

Krishnachari

.. Petitioner

Vs.

1.Puttamma

2.Rajagopal M.Bhandary

3.Chinappa

4.Sivanna

5.Muniraj

6.Murugesh

7.Minor Murali

8.Minor Mohan

(Respondents 7 and 8 are represented
by their natural guardian father,
5th Respondent)

9.Minor Lalitha

(Represented by her natural guardian
her father, 4th Respondent)

10.The Branch Manager,
Axis Bank,
Yelahanka Branch,
Bangalore – 560 064.

.. Respondents

(Notice may be dispensed with for
Respondents 3 to 9 since they
were set ex-parte in the suit)
(Respondents 3 to 9 given up)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order passed in I.A.No.31 of 2013 in O.S.No.113 of 2004 dated 17.07.2013, on the file of the District Munsif-cum-Judicial Magistrate No.I, Hosur, Krishnagiri District.

For Petitioner : Mr.R.Jayaprakash

For Respondents : No Appearance (for R1, R2 & R10)
R3 to R9 – Given up

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order of the District Munsif-cum-Judicial Magistrate No.I, Hosur, dated 17.07.2013 in I.A.No.31 of 2013 in O.S.No.113 of 2004.

2.The case of the revision petitioner is that he as a plaintiff filed a suit in O.S.No.113 of 2004 for specific performance as against the

1st defendant/ the 1st respondent herein before the learned District Munsif-cum-Judicial Magistrate No.I, Hosur, Krishnagiri District. The revision petitioner as purchaser has entered a sale agreement in respect of suit schedule property with his vendor the 1st respondent herein. However having received the advance amount of Rs.40,000/-, the 1st respondent herein failed to receive the balance sale consideration of Rs.50,000/- offered by the revision petitioner and to execute the sale deed in favour of the revision petitioner. Therefore, the above suit was filed by the revision petitioner for specific performance.

3.Whereas, the suit scheduled property came to be illegally sold to the 2nd defendant /2nd respondent by the 1st defendant/1st respondent and his heirs during the pendency of the above suit. Thereupon the plaint was amended and the respondents 2 to 9 were impleaded as defendants, wherein the subsequent purchaser stood arrayed as the 2nd defendant in the suit.

4.In the meantime, the 2nd defendant, who is a subsequent purchaser, so as to defeat the suit, in turn raised a loan from the Axis Bank Ltd., Yelahanka Branch by a registered document in

Doc.No.11500 dated 08.11.2010 and he further executed a Memorandum of agreement by depositing the title deeds. The said act of the 2nd respondent is with intention to deprive the revision petitioner's legitimate rights. The entire transaction is hit by Lis pendens, therefore it became just and necessary to implead Axis Bank Ltd, Yelahanka Branch, as the 10th defendant in the suit. Therefore, the revision petitioner filed an Interlocutory application in I.A.No.31 of 2013 under Order 1, Rule 10 of CPC to implead the 10th respondent in the suit, however, the Trial Court without proper appreciation of the case of the revision petitioner has erroneously dismissed the revision petitioner's application. The said order is impugned herein.

5.I heard Mr.R.Jayaprakash, learned counsel appearing for the petitioner. There is no representation on behalf of the respondents 1, 2 and 10 and the respondents 3 to 9 were given up. I perused the materials available on records.

6.The learned counsel appearing for the petitioner would submit that both the illegal sale in favour of the 2nd respondent and the subsequent loan raised by the 2nd respondent from the 10th respondent by depositing the title deeds of the suit property are hit by

Lis pendens, The said act of the 2nd respondent is with an intention to deprive the revision petitioner's legitimate rights.

7.The 2nd respondent has mortgaged the suit schedule property in favour of the 10th respondent bank by way of registered document dated 08.11.2010, when it is so, the 10th respondent would claim charge over the property. Further, the impugned order is being passed without reasons.

8.Per contra, in the counter filed in the application in I.A.No.31 of 2013 in O.S.No.113 of 2004 before the trial Court would submit that the application is filed belatedly, further the 10th respondent is not necessary party to the present suit, since issue is between the respondents 1 and 2. The 10th respondent has not filed any application to implead himself. Only on appreciation of the said facts the Trial Court has rightly dismissed the revision petitioner's application to implead the 10th respondent.

9.On perusal of the typed set of papers it is noticed by this Court that the revision petitioner's application came to be rejected on the

sole ground that the issue is exclusively between the revision petitioner and 2nd respondent and the presence of the 10th respondent is not required for effective adjudication of the suit. Excepting the one para order rejecting the revision petitioner's application, there is no other discussion made by the trial Court.

10. It is noteworthy that originally the suit was filed as against the 1st respondent, whereas subsequently the plaint was amended and the respondents 2 to 9 were impleaded as defendants by the revision petitioner in consequence of the subsequent purchase made by the 2nd respondent. Further the 2nd respondent, who is a subsequent purchaser has raised a loan from the Axis Bank Ltd, Yelahanka branch by a registered document in Doc.No.11500 dated 08.11.2010 and also executed a Memorandum of agreement by depositing the title deeds. Wherefore, the revision petitioner filed an Interlocutory application under Order 1, Rule 10 of CPC to implead the 10th respondent in the suit.

11. At this juncture it would be relevant to look into a reference made by this Court to a larger bench in **C.R.P.(PD)No.1337 of 2009** reported in **2014(4) CTC 814**, in the matter of **V.L.Dhandapani &**

Ors. v. 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.

12. It is needless to say that when that being the settled law, the parties to the subsequent transactions made by the Transferee pendente lite can be impleaded as the party to the suit. In the case on hand it is obvious that the 2nd respondent has mortgaged the suit schedule property in favour of the 10th respondent by way of registered document dated 08.11.2010, when it is so, the 10th respondent would claim charge over the property. It is palpable that 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. When a transferee pendente lite can be added as a party, this Court is of the firm view that the parties to the subsequent transactions made by the transferee pendente lite are also liable to be impleaded, provided that the relevant factor to be

considered by the Court is to render complete justice and effective adjudication.

13. In so far as the contention of the respondents that he is not a proper party and he has not filed any impleading applications, this Court would like to emphasize a decision of Delhi High Court in the matter of **Ramji Lal Mohinder Kumar v. Naresh Kumari**, reported in **AIR 1984 Del 95**, holding 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.

14. In the light of the above legal propositions and the facts of the case on hand, the dismissal order passed by the trial Court is liable to be set aside by allowing this civil revisions.

15. In the result:

a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.31 of 2013 in O.S.No.113 of 2004, dated 17.07.2013, on the file of the learned District Munsif-cum-Judicial Magistrate No.I, Hosur, Krishnagiri District;

b) the trial Court is directed to implead the Bank Manager as 10th defendant in the suit;

c) the impleading defendant is permitted to file his written statement within a period of one month from the date of filing the amended plaint and the plaintiff is permitted to file his reply to the written statement filed by the impleading the 10th defendant within a period of 15 days thereafter; and

d) on filing written statement and reply statement, the trial Court is further directed to dispose the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2016

Note: Issue order copy on 16.08.2017

Index: Yes

Internet: Yes

vs

To

The District Munsif cum Judicial Magistrate No.I,
Hosur, Krishnagiri District.

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M.V.MURALIDARAN, J.

VS



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