

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.4685 of 2010

and

M.P. No.1 of 2010

Narayanan

.. Petitioner

Vs

1.Parthiban
2.Pappathi
3.Arjunan
4.Sakthivel
5.Shanthi
6.Palanimuthu
7.Palanisamy
8.Selvaraj
9.Vimaladevi
10.Murugesan
11.Sasikala
13.Sivakumar
14.Kalavathi
15.Muthayan
16.Poongavanam
17.Madhan Mohan
18.Shanthi
19.Sathiya

.. Respondents

(The respondents 3 to 15 are not
necessary parties in this Revision)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the orders dated 26.10.2010 passed in I.A.No.246 of 2010 in O.S.No.312 of 2007 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.P.Mani

For Respondents : Mr.A.Sundaravadhanam (for R1 and R2)

Mr.V.Murali (for R16)

R3 to R15 - Given up

R17 to R19 - No Appearance

ORDER

This Civil Revision Petition is filed against the order dated 26.10.2010 passed in I.A.No.246 of 2010 in O.S.No.312 of 2007 on the file of the District Munsif Court, Mettur.

2.The respondents 1 and 2 has filed a suit in O.S.No.312 of 2007, on the file of the District Munsif Court, Mettur, against the respondents 3 to 15 herein for partition and separate possession of their alleged 27/240 shares in the suit properties.

3. According to the learned counsel appearing for the revision petitioner, the respondents / plaintiffs has contended in the suit that the suit properties are the joint family properties as the same belonged to Karumalai

and Thandayee, that the first respondent herein is the grandson of the said Karumalai through one of his sons Murugesan, the 10th respondent herein, that the 2nd respondent herein is the granddaughter of said Karumalai through one of his daughters Chinnapillai, that the partition was effected on 23.08.1994 is not binding on them as they are not parties to the said partition. The 10th respondent herein is not taking care of them and that the petitioner herein and the respondents 14 and 15 have illegally purchased the suit property from the 7th respondent herein and that they are entitled to seek for partition besides raising other pleas. The learned counsel appearing for the revision petitioner further contended that the respondents 17 to 19 have purchased some portion of the suit properties from the power of attorney of the petitioner and the 16th respondent herein pending the aforesaid suit. Therefore, the sale transactions between the respondents No.17 to 19 and 12th respondent/12th defendant, purchased from the revision petitioner/12th defendant is not valid. But, the respondents 1 and 2/plaintiffs have filed I.A.No.246 of 2010 to implead the respondents 17 to 19 herein, who are the power agent of the revision petitioner/12th defendant and purchasers. The said application in I.A.No.246 of 2010 was allowed by the trial Court. Hence, the revision petitioner filed this civil revision petition before this Court.

4. According to the learned counsel appearing for the respondents, the trial Court has considered the submission made by the revision petitioner and rightly come to the conclusion in paragraph-11 of the order by stating that the impleading / proposed respondents are the subsequent purchasers of the property from the 12th defendant. Therefore, they are the necessary parties. Hence, they can be accommodated from the shares of the vendors of the 12th and 15th defendants. They are also necessary parties in the said suit. But, however, the trial Court has clearly held that they cannot participate in the trial of the suit. Therefore, the trial Court is right in allowing the application. Hence, the civil revision petition deserves to be dismissed.

5. Heard Mr.P.Mani, learned counsel appearing for the revision petitioner and Mr.A.Sundaravadanam, learned counsel appearing for the respondents 1 and 2.

6. The respondents 1 and 2 have filed the application in I.A.No.246 of 2010 in O.S.No.312 of 2007 before the District Munsif Court, Mettur to implead the respondents No.17 to 19 as defendants in the suit. It is an admitted fact that the respondents No.18 and 19 had purchased the portion of the suit property from the revision petitioner/12th defendant through the power agent / respondent No.17.

7. The point for consideration is whether the subsequent purchaser is necessary party in the pending suit in O.S.No.312 of 2007 since the impleading petitioners / respondents 18 and 19 have purchased a portion of the property from the revision petitioner / 12th defendant. Therefore, the respondents 1 and 2 / plaintiffs have filed the application in Order 1 Rule 10(2) of C.P.C. to implead the respondents 18 and 19 as a purchaser of the suit property and respondent No.17 as the power agent of the 12th defendant.

8.The Hon'ble Supreme Court decision reported in ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others reported in 2013 (2) CTC 104 (SC) : 2013 (5) SCC 397***, is very much relevant to the facts of the case. In the aforesaid decision, the Hon'ble Apex Court has held as follows:-

"54.The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party-defendant to the suit under Order 1 Rule 10 CPC. I have no hesitation in concurring with the view that no one other than the parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The

High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order 1 Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order 22 Rule 10 CPC, which is as under:

"10.Procedure in case of assignment before final order in suit.-(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order 1 Rule 10 CPC the prayer for addition made by the appellant could be

considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party-defendant and, if so, on what terms.

55. We are not on virgin ground insofar as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In *Khemchand Shankar Choudhari v. Vishnu Hari Patil* (1983) 1 SCC 18 this Court held that: (SCC p.21, para 6)

"6. ... The position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a

proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding...."

Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite: (SCC pp.20-21, para 6)

"6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject-matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. *Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard.* He

can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an Official Receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out." (emphasis supplied)

56. To the same effect is the decision of this Court in *Amit Kumar Shaw v. Farida Khatoon* (2005) 11 SCC 403 wherein this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party-defendant to the case provided his

interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject-matter of the dispute. This Court observed: (SCC p.411, para 16)

"16. The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. *A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially*

exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case." (emphasis supplied)

To the same effect is the decision of this Court in *Rikhu Dev v. Som Dass* (1976) 1 SCC 103.

57. ...

57.1. ...

57.2. ...

57.3. Since the appellant has purchased the entire estate that forms the subject-matter of the suit, the appellant is entitled to be added as a party-defendant to the suit."

9. The aforesaid decision was followed by this Court reported in **2015 (4) CTC 293** (*Devaki Thiyagarajan v. Ahamed and others*) wherein, this Court held as follows:-

"65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y. Eqbal, as under:

"Section 52 of the Transfer of Property Act speaks about the Doctrine of lis pendens. It is well settled that the Doctrine of lis pendens is a Doctrine based on the ground that it is necessary for the administration of justice that the decision of a Court in a Suit should be binding not only on the litigating parties but on those, who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation."

66. His Lordship has also observed that Order 1, Rule 10, CPC., empowers the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary or proper for effective adjudication of the issue involved in the Suit. It is manifest that Order 1, Rule 10(2), C.P.C., gives a wider discretion to the Court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the Court is essential for effective determination of the issues involved in the Suit.

67....

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69....

70. We have struck a balance between the submissions made on behalf both sides and ultimately found that as observed by the Division Bench of the Apex Court in the above cited decision, the provisions of Order 1, Rule 10(2) of C.P.C., empowers Court to add any person as a party at any stage of the proceedings.

71. As aforestated in the earlier paragraphs, the Respondents 2 to 5/ Plaintiffs 1 to 4 have not alienated the Suit property in favour of the Appellant/proposed 5th Plaintiff with the permission of the Court. However, as argued by Mr.R.Thiyagarajan, since the Respondents 2 to 5/Plaintiffs 1 to 4 have allegedly sold the Suit property in favour of the Appellant/proposed 5th Plaintiff, they might not show much interest or due diligence in conducting the trial of the Suit. Even if it is presumed that the Appellant/ proposed 5th Plaintiff is not included as one of the co-Plaintiffs to prosecute the Suit as against the Respondents 6 to 9, she would definitely approach the Court of law with a new Suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided

that the Appellant/proposed 5th Plaintiff could be allowed to be impleaded as the 5th Plaintiff.

71(a).Further, we do not see any collusiveness between the Appellant/proposed 5th Plaintiff and the Respondents 2 to 5/Plaintiffs 1 to 4. Section 52 of T.P. Act is a substantive law, whereas the provisions of Order 1, Rule 10(2) of C.P.C., is a procedural law. Even though the Respondents 2 to 5/Plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present Suit, Order 1, Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as Plaintiff or Defendant upon or without any Application of either party, whose presence appears to be necessary in Order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit."

10.Further, the trial Court has rightly held that the proposed respondents 18 and 19 through the power agent respondent No.17 are necessary parties in the above said suit.

11. In the light of the decision of the Hon'ble Supreme Court, I am inclined to pass the following orders:

(i) the impugned order passed by the trial Court in I.A.No.246 of 2010 in O.S.No.312 of 2007 on the file of the District Munsif Court, Mettur is hereby confirmed.

(ii) the trial Court is directed to dispose of the suit in O.S.No.312 of 2007 as expeditiously as possible.

12. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.04.2016

vs

Index : Yes/No
Internet : Yes/No

To

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