

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 19.10.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.2076 of 2016and C.M.P. (MD) No.9695 of 2016

- 1.R.Shanmugam Servai
- 2.R.Jegannathan Servai
- 3.R.Seenivasan Servai
- 4.S.Rajasekaran
- 5.J.Manimaran

... Petitioners/Respondents/
Defendants 1, 3 to 5 & 11

-Vs-

- 1.D.Pradeep
 - 2.Balakrishnan Servai
 - 3.Panjavarnam @ Lakshmi
 - 4.Radhakrishnan
 - 5.Rajakumari
 - 6.Minor Sivaranjani
 - 7.Minor Nithya
- (R6, 27 represented by this mother
and guardian 5th respondent)

- 8.Arunprasath
- 9.Seethalakshmi
- 10.Arunadevi
- 11)Amutha Devi
- 12)Vijayakumar
- 13.Ashokan
- 14.Mohan
- 15.Ravipazhanivel
- 16.Balamurugan
- 17.Gnanaprakasam
- 18.Vijayan
- 19.Jeyakodi
- 20.Vivek
- 21.Vasuki
- 22.Janaki
- 23.Esli C N
- 24.Vasanthi



25.Padmini
26.Maha @ Mahalakshmi
27.Malar
28.Senthil @ Senthil Kumar
S/O.Jeganathan
29.SenthilKumar

... Respondents 2, 6 to 10
12 to 33 & Defendants-2,6

**(R-2 to R18, R21 to 29 are given up
as they were either sailing with
petitioners or Ex-parte in the lower Court)**

Prayer: Petition filed under Article 227 of the Constitution of India to allow the civil revision petition to revise the order dated 23.02.2016 passed by the District Judge, Sivagangai District in I.A.No.30 of 2016 in O.S.No.15 of 2010.

For Petitioners : Mr.R.A.Mohanram

ORDER

The revision petitioners have filed the above revision before this Court against the order passed in I.A.No.30 of 2016 in O.S.No.15 of 2010 on the file of the learned District Judge, Sivagangai.

2. The second petitioner/third plaintiff in the suit who is the revision petitioner along with other plaintiffs, filed a suit for partition and separate possession of the joint properties. The second petitioner was examined as PW2 in the suit and only then the first respondent/third party to the suit filed a petition to implead him as 22nd defendant claiming purchase some of the items of properties from the power of attorney of the second respondent/second plaintiff pending the suit. He further submits that the sale deed and other documents were never intended to come to force and have not acted upon till this day. He is not a *bona fide* purchaser. The sale deed dated 14.10.2010, alleged to have been executed between the second respondent through power of attorney and the first respondent/petitioner pending the suit is hit by Section 52 of the Transfer of Property Act and the aforesaid suit is binding on the first respondent/petitioner. Hence, he cannot be impleaded long after six years after the filing of the suit especially when the PW.1 and PW.2 were already examined. The trial Court allowed the application to implead the first respondent/proposed petitioner.

3. Against the said order, the revision petitioners filed this civil revision petition.



4. Heard the learned Counsel appearing for the petitioners and perused the materials available on record.

5. The petitioners and other plaintiffs filed a suit for partition. In the above said partition suit, the first respondent herein filed an application to implead himself as 22nd defendant in the suit. The said application was allowed without considering the objection of the revision petitioners. Therefore, challenging the above said order, the petitioners filed this revision before this Court.

6. The first respondent purchased items 15 to 19 from one from one Balakrishnan who is the second plaintiff in the suit through the power agent Kalyanasundaramoorthy by a registered sale deed dated 11.10.2010. The second plaintiff executed a Power Deed dated 06.09.2010 in favour of Kalyanasundaramoorthy. The impleading petitioner/proposed defendant obtained the patta in his name and also paid the property tax. Therefore, according to the proposed impleading respondent, they are the necessary parties in the aforesaid suit.

7. By considering the nature of the case, the trial Court allowed the application filed by the first respondent/proposed respondent in the above suit in the light of the decision rendered by the Honourable Supreme Court in **Thomson Press (India) Limited -vs- Nanak Builders and Investors Private Limited and others** reported in **2013 (2) CTC 104 (SC)** and followed by this Honourable Court in **Devaki Thiagarajan -vs- Ahamed and others** reported in **2015 (4) CTC 293**, wherein, this Court held as that a transferee pendente lite of an interest in an 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 and this Court held that 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 and Order 1, Rule 10(2) of Code of Civil procedure, 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.

8. Therefore, on the facts and circumstances of the case, the trial Court considered the case of the first respondent and by invoking the provisions of law. The first respondent cannot ~~pendente lite~~ transfer the properties. Therefore, the first respondent can be impleaded as the party to the proceedings and



further the petitioner is a *bona fide* purchaser can be decided at the stage of trial. Therefore, there is no impediment to implead the first respondent as the proposed defendant in the above said suit.

9. Accordingly, in the light of the facts and circumstances and the decisions cited supra, this Court is not inclined to interfere with the order passed by the trial Court and hence, the civil revision petition is dismissed. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

TO

The District Judge,
Sivagangai.

+1 cc to MR.R.A.MOHANRAM, Advocate SR.No.62623

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SMA/PV/14.12.2016:4P/3C