

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.4229, 4276, 4487 and 4521 of 2015

COMMON ORDER:

Since all these Revisions arise out of the same suit, they are being disposed of by this common order.

2. The 1st respondent in these Revisions filed O.S.No.11 of 2009 on the file of the Senior Civil Judge at Jangaon against respondent Nos.2 to 42 for partition and separate possession of the plaint schedule properties claiming a 5/16th share out of 50% of the plaint "A" schedule and 5/16th share out of plaint "B" schedule property.

3. A preliminary decree was passed therein on 29-03-2014 directing partition of 50% of the plaint "A" schedule and entire plaint "B" schedule and for allotment of 5/16th share in favour of 1st respondent. The said decree directed the 1st respondent/Decree Holder to apply for a final decree subject to appeal. It also directed the purchasers from

2nd respondent/1st defendant to work out their remedies in the final decree proceedings for allotment of land

purchased by them to the share of 2nd respondent since they were *bona fide* purchasers for consideration.

4. I.A.No.689 of 2014 was filed by the Decree Holder for passing final decree and I.A.No.846 of 2014 was filed by him to appoint an Advocate-Commissioner in the Final decree application.

5. The petitioner in C.R.P.Nos.4229 of 2015 and 4521 of 2015 claim interest in two plots admeasuring 150 sq. yds and 100 sq. yds in item No.1 of plaint "A" schedule property while petitioners in C.R.P.Nos.4276 of 2015 and 4487 of 2015 claim interest in two plots admeasuring 200 sq. yds each in item No.2 of plaint "A" schedule property.

6. The petitioner in C.R.P.Nos.4229 of 2015 and 4521 of 2015 contended that late Kadingula Sathaiah, father of 2nd respondent executed a registered settlement deed dt.27-12-1995 (Doc.No.1445/1995) for an extent of 484 sq. yds in favour of

respondent no.20/ defendant no.19; that respondent No.20/defendant No.19 executed a registered sale deed dt.26-05-2003 (Doc.No.915/1993) in favour of respondent No.38/defendant No.37 for 150 sq. yds; and that respondent No.38/defendant No.37 sold this 150 sq. yds plot to the petitioner under registered sale deed

dt.11-02-2005 (Doc.No.258/2005). He further contended that respondent No.20/defendant No.19 sold 100 sq. yds, which he had acquired under Doc.No.1445/1995 dt.27-12-1995 from Kadingula Sathaiah in favour of respondent No.37/defendant No.36 under registered sale deed dt.26-05-2003 (Doc.No.916/2003); and that respondent No.37/defendant No.36 sold the said 100 sq. yds plot in his favour under registered document No.259/2005 dt.11-02-2005.

7. Since he has an interest in these plots, which are subject matter of the suit (item No.1 of the plaint "A" schedule), he filed I.A.No.919 of 2014 and 910 of 2014 to implead him as respondent in I.A.No.689 of 2014 and also in I.A.No.846 of 2014.

8. Likewise, the petitioner in C.R.P.No.4276 of 2015 and 4487 of 2015 contended that he purchased an open plot of land admeasuring 200 sq. yds covered by Sy.No.408/5 (item No.2 of the plaint "A" schedule) under a registered sale deed being Doc.No.1264/2013 dt.20-02-2013 from respondent No.32/defendant No.31; that respondent No.32/defendant No.31 had earlier purchased the same plot from respondent No.28/defendant No.27 under registered Doc.No.2169/2004 dt.28-10-2004; and respondent

No.28/defendant No.27 had purchased the same plot from the 1st defendant/respondent No.2 under registered Doc.No.2401/2001 dt.20-12-2001.

9. He filed I.A.No.912 of 2014 in I.A.No.689 of 2014 and I.A.No.911 of 2014 in I.A.No.845 of 2014 to implead him.

10. It is the case of the petitioners in these I.As. that the plots purchased by them are subject matter of the suit and form part of the plaint schedule, that they are *bona fide* purchasers having rights and title over the respective plots and the 1st respondent/Decree Holder deliberately and intentionally did not verify the transactions in relation to the suit schedule properties by obtaining encumbrance certificates and failed to add them as parties to the suit. They therefore contended that they are entitled to be impleaded in the above applications to put forth their pleas for a just decision of the case.

11. Counter-affidavits were filed by the 1st respondent/Decree Holder opposing the impleadment of the petitioners. He contended that the documents relied upon by the petitioners are baseless and fictitious and created for the purpose of filing these applications in collusion with other defendants. He contended that the

documents relied upon by the petitioners do not relate to the present case as the name of the erstwhile owner was not revealed and that mere purchase of open land does not mean that it is covered by the suit schedule property. He contended that the principal vendor of the petitioners failed to defend their case in the suit even after receipt of the summons and that execution of documents during the pendency of the suit is void and is in disobedience of the Court orders. He contended that the petitioners are at liberty to raise their claim before the Advocate-Commissioner for identification of share of the entitled party to the suit and cannot maintain these applications at this juncture. He stated that he verified the records and made vendors of the petitioners as parties to the proceedings and also contended that the documents filed along with the applications by the petitioners are not supported by any layout and do not indicate that they are involved in the suit. He further pointed out that clause-4 in the decree which permits the purchasers of 1st defendant/2nd respondent to participate in the suit proceedings safeguards petitioners' interests and in fact the property continues to be agriculture property and was not converted into plots. A plea was also raised that the applications were barred by limitation.

12. By separate orders dt.27-07-2015, the Court below dismissed all the applications. It held that the suit was a partition suit filed by the 1st respondent against 41 defendants; that it was decreed by way of a preliminary decree on 29-03-2014; rights accrued to the vendors of the petitioners were given protection in clause-4 of the decree itself on the ground that they were the *bona fide* purchasers; and the present applications are filed belatedly with a view to stall final decree proceedings. It held that petitioners are not the parties in the suit and so they cannot be permitted to be impleaded in the final decree petition and Order I Rule 10 C.P.C. does not provide such facility. It also held that the doctrine of *lis pendens* would apply and the documents are void.

13. Challenging the same, these Revisions are filed.

14. Learned counsel for petitioners contended that the view of the Court below that petitioners are not entitled to be impleaded cannot be sustained and its view that transactions which are *lis pendens* are void is contrary to law. He denied that the plots purchased by the petitioners in the 4 Revisions did not form part of plaint "A" schedule and contended that if the Advocate-Commissioner appointed in the final decree proceedings finds that the plots purchased by the petitioners fall outside the plaint

“A” schedule property, and the Court accepts the said report, then the petitioners may not get any relief but if they fall within plaint “A” schedule property, and the petitioners are not impleaded, grave and irreparable loss would be caused.

15. He contended that the purchases in favour of the petitioner in C.R.P.Nos.4229 of 2015 and 4521 of 2015 are long prior to the suit and the 1st respondent/D.Hr deliberately did not implead the petitioner therein since he had not verified the transactions by obtaining an Encumbrance Certificate and he cannot be allowed to take advantage of his own wrong. He further contended that the said petitioner is entitled to be impleaded since grave prejudice would be caused to him particularly in view of clause-4 of the preliminary decree which entitle all purchasers from the 2nd respondent/1st defendant to work out their remedies in the final decree proceedings. He even went to the extent of contending that the 2nd respondent/1st defendant had lost title to the plots sold in 2005 to the petitioner much prior to the filing of the suit in 2009 in view of the purchase by the petitioner and his predecessors and therefore any decree against the 2nd respondent/1st defendant does not bind the petitioner

since the 2nd respondent/1st defendant was not having any title on the date the suit was filed and the petitioner cannot be said to be claiming under him.

16. Coming to C.R.P.Nos.4276 of 2015 and 4487 of 2015, learned counsel for petitioner contended that the purchase in favour of the said petitioner is pending suit and therefore under Order XXII Rule 10 C.P.C., if not Order 1 Rule 10 CPC, the petitioner is entitled to be impleaded as a party to the final decree proceedings particularly in view of clause-4 of the preliminary decree.

17. The learned counsel for respondents refuted the above contentions and supported the order passed by the Court below.

18. I have noted the contentions of both sides.

19. The view of the Court below that a transaction which is *lis pendens* is void is contrary to law. The law states that transactions *pendente lite* are subject to the result of the litigation but are not void.

20. In **Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.**^[1], the Supreme Court held :

“The second aspect which the proposed judgment succinctly deals with is the effect of a sale pendente lite. The legal position in this regard is also fairly well settled. A

transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation. In Nagubai Ammal v. B. Shama Rao³² this Court while interpreting Section 52 of the Transfer of Property Act observed: (AIR p. 602, para 25)

“25. ... the words ‘so as to affect the rights of any other party thereto under any decree or order which may be made therein’, make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto.”

50. To the same effect is the decision of this Court in Vinod Seth v. Devinder Bajaj³³ wherein this Court held that Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite: (SCC p. 20, para 42)

‘42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.”

51. The decision of this Court in A. Nawab John v. V.N. Subramaniam³⁴ is a recent reminder of the principle of law enunciated in the earlier decisions. This Court in that case summed up the legal position thus: (SCC p. 746, para 18)

“18. ... ‘12. ... The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only

postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.”

21. The question whether a party can be impleaded in the suit after a preliminary decree is passed in a partition suit was considered in **Dhanlakshmi v. P. Mohan**^[2], wherein the Supreme Court has held :

“Section 52 deals with a transfer of property pending suit. In the instant case, the appellants have admittedly purchased the undivided shares of Respondents 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 in 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 other 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 trial court.”

22. Similar view was expressed by a Division Bench of this Court in **I.Aga Reddy and others Vs. S.Dharneet Singh**^[3]. The Division Bench observed :

“The application filed under Order I Rule 10 C.P.C. need not depend upon the existence of absolute rights. It would be sufficient, if the parties have some interest in the property, which is the subject matter of the suit. The petitioners can certainly fall back not

only upon the decree in O.S. No. 1161 of 1996 but also on the relationship in the family. The contention of the respondents that third parties cannot be impleaded in a suit, after a preliminary decree is passed, cannot be countenanced. The reason is that in any suit, in which a final decree is contemplated, it is deemed to be pending till such final decree is passed. Therefore, the petitioners deserve to be impleaded in the suit as defendants and as respondents in the final decree proceedings.”

23. This decision has been followed by a learned Single Judge of this Court in **T.Chandra Sekhar and another Vs. Sunchu Rajamallu**^[4].

24. Having regard to the above decisions, I am not inclined to follow the decisions in **Vasudeva Kallurao Vs. Ramachandra Rao and another**^[5] and **Bakthavatsalam Vs. Anjapuli and 5 others**^[6] relied upon by the counsel for respondents.

25. There is no dispute that clause-4 of the preliminary decree itself allows purchasers from the defendant No.1/2nd respondent to workout their remedies in the final decree proceedings for allotment of the land purchased by them to the share of 1st defendant since they are *bona fide* purchasers. I also agree with contention of counsel for petitioners that in case the plots purchased by the

petitioners in the 4 Revisions did not form part of plaint “A” schedule and that if the Advocate-Commissioner appointed in the final decree proceedings finds that the plots purchased by them fall outside the plaint “A” schedule property, and the Court accepts the said report, then the petitioners may not get any relief, but if they fall within plaint “A” schedule property, and the petitioners are not impleaded, grave and irreparable loss would be caused. Thus the petitioners have to be allowed to get impleaded in the above two applications.

26. So I am of the opinion that the Court below committed a grave error in dismissing the applications I.A.Nos.912 and 919 of 2014 and 910 and 911 of 2014 filed by the petitioner seeking impleadment in I.A.No.689 of 2014 and 845 of 2014. Therefore the impugned orders cannot be sustained. They are accordingly set aside and the above I.As. are allowed.

27. Consequently, the C.R.Ps. are allowed. No costs.

28. As a sequel, miscellaneous petitions pending if any, in these Civil Revision Petitions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 10-02-2016

Vsv/*

[\[1\]](#) (2013) 5 SCC 397

[\[2\]](#) , (2007) 10 SCC 719

[\[3\]](#) 2013(4) ALD 138 (DB)

[\[4\]](#) 2014(6) ALD 58

[\[5\]](#) CDJ 1977 Ker HC 076

[\[6\]](#) 2001(1) CTC 19