

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No. 3928 of 2017

and

C.M.P. No. 18356 of 2017

1.M.Paramasivam
2.M.Loganathan
3.M.Thirumurthy
4.P.Panneerselvam
5.P.Baskaran
6.P.Ganesan

..Petitioners

Versus

1.R.M.Jayamurugan
2.T.Selvaraj
3.T.Ravichandran
4.Valliammal
5.P.Gopalakrishnan
6.M.Sakunthala
7.V.K.Subramaniam
8.P.Lingamoorthy
9.Karuppasamy Gounder
Palanisamy Gounder (Died)
T.C.Palanisamy (Died)
10.S.Varadharajan

..Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 16.09.2017 made in I.A. No.185 of 2017 in O.S. No.21 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

For Petitioner : Mr. N.Manokaran

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 16.09.2017 made in I.A. No.185 of 2017 in O.S. No.21 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

2. The suit in O.S. No.21 of 2008 has been filed by the Petitioners herein along with two others for the relief of declaration to declare them as the owner of the suit property. Pending suit, the first respondent herein has filed an Application in I.A. No.185 of 2017 before the learned District Munsif cum Judicial Magistrate, Perundurai to implead him as a 10th Defendant in the Suit. According to the first respondent herein he has purchased substantial portion of the suit by a sale deed dated 06.10.2014 and therefore, he is a proper and necessary party to the suit, it was also stated that he has initiated arbitration proceedings and obtained an award in his favour in respect of the suit property. He has also placed reliance on the order dated 28.10.2015 passed by this Court in W.P. No.11482 of 2014 whereby this Court has recognized this right over the suit property. The first respondent also placed reliance on the order dated 02.06.2016 passed in W.P. No.7041 of 2016, whereby this Court set aside the order dated 21.01.2016 passed by the Registering Authority refusing to registered the sale deed in favour of the petitioner in respect of a portion of the suit property Therefore, according to the first respondent is proper and necessary party to the suit filed by Revision

3. The said Application was resisted by the Revision petitioners herein by filing a counter stating that the first respondent is not a proper and necessary party in the suit and the application has been filed only to drag on the proceedings. Further, the first respondent herein has earlier filed an application to implead himself as a party to the suit in I.A. No. 350 of 2014 which was dismissed for default. Therefore, without filing an application to restore I.A. No. 350 of 2014, the present application filed by him is barred by the principles of *res judicata*. Further, the first respondent, knowing fully well about the suit filed by the revision petitioners, has filed the W.P. No.7041 of 2016 before this Court and obtained an order. In any event, the first respondent is not a proper and necessary party to the suit and therefore, the revision petitioners prayed for dismissal of application filed by the first respondent to implead him as a party.

4. The learned counsel for the revision petitioners would submit that the first respondent has filed the present application without disclosing the earlier Application in I.A. No.350 of 2014 filed by him to implead himself as a party. Further, the learned counsel for the petitioners submitted that the first respondent has created a fraudulent sale deed dated 28.02.2011 and it was set aside by this Court in the order dated 25.08.2014 in WP No. 11482 of 2014. The first respondent, without disclosing the same has created yet another sale deed on 06.10.2014 and the same was refused to be entertained by the Sub-Registrar, Perundurai by issuing Check Memo No.2 of

2014 dated 06.10.2014. Challenging the same, the first respondent filed WP No. 7041 of 2016 and by order dated 02.06.2016, this Court allowed the writ petition subject to the outcome of the civil dispute pending in respect of the suit property. According to the counsel for the revision petitioners, the conduct of the first respondent was discussed by this Court in the order dated 25.08.2014 in WP No. 11482 of 2014 while setting aside the award passed by the Arbitrator in favour of the first respondent and therefore, the learned counsel for the petitioners would contend that the first respondent is not a proper and necessary party to the suit and the trial Court failed to consider it while allowing the application for impleadment.

5. From the aforesaid fact and perusal of the documents available materials, it is an admitted fact that the earlier the revision petitioners filed W.P. No.11482 of 2014 to set aside the award passed by the arbitrator in favour of the first respondent and by order dated 28.10.2015 this Court set aside the award passed by the Arbitrator with certain directions. This Court has also given direction with respect to the issue involved in the suit by order dated 02.06.2016 in WP No. 7041 of 2016. Thus, it is clear that there were dispute between the revision petitioners herein and the first respondent over the title to the suit property. In such circumstances, this Court is of the view that impleading the first respondent as a party to the suit will no way prejudice the revision petitioners herein. In fact, the revision petitioners will get an opportunity to cross-examine the first respondent with respect to the orders passed by this Court referred to above and on other aspects which will have a

bearing in the suit. Even assuming that the contention of the revision petitioners is accepted that the first respondent is a *pendente lite* purchaser of the suit property and such purchase is hit by Section 52 of the Transfer of Property Act, the first respondent is a proper and necessary party to the suit who claimed himself to have purchased the suit property to the detriment of the revision petitioners claim. In this context, reference can be made to the decision of The Hon'ble Supreme Court in **Thompson Press (India) Ltd., Vs. Nanak Builders & Investors Ltd., & Others** reported in (2013) 5 SCC 397 at paragraphs 29, 30 and 31 has held as follows:

29. The aforesaid Section 52 of the Transfer of Property Act again came up for consideration before this Court in *Rajender Singh Vs. Santa Singh and Their Lordships with approval of the principles laid down in Jayaram Mudaliar V. Ayyaswami* reiterated: (*Rajender Singh* case, SCC p.711, para 15)

"15. The doctrine of *lis pendens* was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of *lis pendens* is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property,

which are the subject-matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.

30. *In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 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.*

31. *Order 1 Rule 10 CPC reads as under:*

"10. Suit in name of wrong plaintiff-

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties: The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order

to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Further, in **Devaki Thiyagarajan Vs. Ahamed & Others** reported in **2015 (4) CTC 293**, the Division Bench of this Court at paragraphs 54,62,63,71,71 has held as follows:

54. In so far as the present Appeal is concerned, we would like to place it on record that the Principle of lis pendens embodied in Section 52 of the T.P.Act being a Principle of Public Policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking Notice of a title acquired during the pendency of the litigation. 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.

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

63. Under Order 1, Rule 10, C.P.C, a party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the Suit and then he can be impleaded.

71. As aforesaid 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.

6. In the light of the decisions referred to above and having regard to the facts of the present case, this Court is of the view that no prejudice will be caused to the revision petitioners in the event of the first respondent being impleaded as a party in the Suit. As mentioned above, if the first respondent is impleaded, then the revision petitioners will have an opportunity to cross-examine with respect to the issues involved in the suit. In such view of the matter, I do not find any error or illegality in the order passed by the court below.

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

06 .11.2017

rkp

Index :Yes/No
Internet:Yes/No

To

The District Munsif cum Judicial Magistrate,
Perundurai.

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D.KRISHNAKUMAR,J.
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