

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : **12.09.2017**

DELIVERED ON : **13.11.2017**

Coram

The Honourable **Mr.Justice RAJIV SHAKDHER**  
and

The Honourable **Mr.Justice ABDUL QUDDHOSE**

**Original Side Appeal No.51 of 2014**  
**and**  
**M.P.No.1 of 2014 in O.S.A.SR.17921 of 2014**

**O.S.A.No.51 of 2014**

1. Mr.R.Chandrasekar
2. Mrs.Lakshmi
3. R.Nagarajan
4. Krishnan Ramasami .. Appellants

**Vs.**  
सत्यमेव जयते

1. Mrs.Easwari @ K.Rajeshwari
2. Sekar Prahaladhan
3. Shrikar Babu Borra

4. Commissioner,  
Corporation of Chennai,  
Ripon Building, Park Town,  
Chennai – 600 003.

5. The Member Secretary,  
Chennai Metropolitan Development Authority,  
Egmore, Chennai – 600 008. ... Respondents

**Prayer :** Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, against the Fair and Decretal order dated 27.04.2012 in Appln.No.1412 of 2010 in C.S.No.1068 of 2005, on the file of this Court.

For Appellants : Mr.V.Lakshminarayanan  
For Respondent 1 : Mr.G.S.Selvatharasu  
For Respondent 4 : No appearance  
For Respondent 5 : Ms.V.Vanitha  
for Mr.C.Johnson

**M.P.No.1 of 2014 in O.S.A.SR.17921 of 2014**

1. Mr.R.Chandrasekar  
2. Mrs.Lakshmi  
3. R.Nagarajan  
4. Krishnan Ramasami .. Appellants

Vs.

1. Mrs.Easwari @ K.Rajeshwari

2. Sekar Prahaladhan
3. Shrikar Babu Borra
4. Commissioner,  
Corporation of Chennai,  
Ripon Building, Park Town,  
Chennai – 600 003.
5. The Member Secretary,  
Chennai Metropolitan Development Authority,  
Egmore, Chennai – 600 008. ... Respondents

**Prayer :** Petition filed under Order XIV Rule 8 of Original Side Rules read with Section 151 of the Code of Civil Procedure to grant leave to the appellants to file an appeal against the judgement and decree in C.S.No.1068 of 2005 dated 09.05.2012, on the file of this Court.

For Appellants : Mr.V.Lakshminarayanan

For Respondent 1 : Mr.G.S.Selvatharasu

For Respondent 4 : No appearance

For Respondent 5 : Ms.V.Vanitha  
for Mr.C.Johnson

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**COMMON JUDGEMENT****RAJIV SHAKDHER, J.****O.S.A.No.51 of 2014**

1. This is an appeal preferred against the judgement and order dated 27.04.2012, passed by the learned Single Judge in A.No.1412 of 2010 in C.S.No.1068 of 2005.

2. The appellants preferred two applications being : A.No.1409 of 2010 and 1412 of 2010. By virtue of A.No.1412 of 2010, the appellants had sought impleadment in the suit, while, the relief sought in A.No.1409 of 2010, was to reopen the suit, which was reserved for judgement at that point in time.

2.1. The learned Single Judge dismissed both these applications via the impugned judgement and order dated 27.04.2012.

2.2. The suit, i.e., C.S.No.1068 of 2005, was filed by respondent No.1. The suit instituted by respondent No.1 had arrayed respondent No.2 to 5 as defendant No.1 to 4.

2.3. The appellants herein claimed in the application filed for impleadment, to which we have made a reference above, that they were *bonafide* purchasers of the suit property, qua which they had acquired interest in their capacity as joint owners, vide registered sale deed dated 09.01.2006, executed in their favour by respondent No.3/defendant No.2.

3. The appellants had set up a case before the learned Single Judge that they were in absolute possession and enjoyment of the suit property.

3.1. The appellants further claimed that they became aware of the institution of the suit by respondent No.1 at a point in time, when, they submitted their building plans for constructing a building on the suit property, to respondent No.4/defendant No.3; who, incidentally, refused to accord sanction till the final disposal of the suit filed by respondent No.1.

3.2. The appellants further took the stand, before the learned Single Judge that, in view of this position, they had caused a notice to be served on respondent No.4/defendant No.3,

via their lawyer, qua which, they, inter alia, indicated that they would abide by the decision rendered in the suit.

4. The appellants, thus, contended before the learned Single Judge that, since, respondent No.4/defendant No.3 did not accord sanction qua the building plans submitted by them, they were constrained to move the subject application for impleadment in the suit, in order to enable a complete and full adjudication of all issues which, necessarily, would arise for consideration in the suit.

5. The record shows that the impleadment application was filed by the appellants in and about August, 2006. As adverted to at the very outset, the said application was dismissed on 27.04.2012, by the learned Single Judge. The record further shows that by this time, respondent No.2 to 5/defendant No.1 to 4 had been set ex parte. The consequent effect of these circumstances was that, the learned Single Judge passed an ex-parte judgement and decree dated 09.05.2012.

6. Given this background, the appellants have filed the instant petition being : M.P.No.1 of 2014 in O.S.A.(SR) No.17921 of 2014, to seek permission to file an appeal against the ex parte judgement and decree dated 09.05.2012.

6.1. As would be obvious from the facts narrated above that the result of M.P.No.1 of 2014 in O.S.A.(SR) No.17921 of 2014, to a large extent, would depend on the outcome of O.S.A.No.51 of 2014.

6.2. The record shows that respondent No.1 had filed an action for being declared as the sole and absolute owner of the suit property with the consequential reliefs. The consequential reliefs sought are as follows : (i) that respondent No.2 and 3/defendant No.1 and 2, be directed to deliver vacant possession of the suit property; (ii) that respondent No.2 and 3/defendant No.1 and 2 be permanently enjoined from putting up any construction or encumbering the suit property by way of sale or, by creating a charge or mortgage or any kind of security interest in the suit property ; (iii) and lastly, to permanently injunct respondent No.4 and 5/defendant No.3 and 4 from sanctioning

the building plans that may be submitted by respondent No.2 and 3/defendant No.1 and 2.

7. This action was based on the following broad assertions in the plaint filed by respondent No.1 :

(i) Respondent No.1 averred that the suit property was, originally, purchased in the name of, one, Duraisamy Mudaliar along with certain other properties, by virtue of a sale deed 19.06.1919. The suit property, along with other properties, was held as part of joint family properties. The joint family comprised of the said, Duraisamy Mudaliar and his brother, Rathina Mudaliar. A partition was effected between Duraisamy Mudaliar and Rathina Mudaliar on 25.12.1951, which was recorded in a "koor chit". The suit property, along with some of the other properties, came to the share of Rathina Mudaliar. Rathina Mudaliar executed a Will dated 24.04.1952, bequeathing his properties, which included the suit property, in favour of his two daughters, namely, Padmavathiammal, and respondent No.1, i.e., Easwari alias K.Rajeswari.

(ii) The sisters, thereafter, partitioned the properties between themselves and recorded this fact in a "Koor chit" dated 14.10.1968. Consequently, the suit property, *inter alia*, fell to the share of respondent No.1.

(iii) Respondent No.1 averred that the suit property is a vacant piece of land, qua which, she has both title and possession. It is further averred by respondent No.1 that in and about March, 2005, when, she inspected the suit property, she discovered via an advertisement board erected thereat that a construction project was underway under the name and style of : Sri Selvavinayaga. Respondent No.1 claims that thereafter she applied for an encumbrance certificate, whereupon, she found that several documents had been executed in respect of the suit property, which included a sale agreement dated 30.03.2005. The said sale agreement according to respondent No.1 was executed by respondent No.3/defendant No.2, based on a settlement deed dated 07.12.2004. The said settlement deed was, apparently, executed by, one, Mr.D.Sambamurthy, and Ms.D.Sarojini, in favour of respondent No.3/defendant No.2, who was described therein as their adopted son.

(iv) On discovering these facts, in March, 2005, respondent No.1 filed her objections with respondent No.5/defendant No.4. The objections taken was that the building plans submitted ought not to be sanctioned. Respondent No.1 further claims that on 27.04.2005, a legal notice was also served on respondent No.2/defendant No.1, wherein, *inter alia*, the stand taken was that, she was the absolute owner of the suit property. Respondent No.1 followed this by lodging a police complaint dated 21.05.2005, with the Commissioner of Police, Egmore, Chennai.

(v) Respondent No.1 avers that, since, she was advised by the police to approach the civil court, she instituted the aforementioned suit. In sum, respondent No.1 has taken the stand in the suit that the abovenamed Mr.D.Sambamurthy and Ms.D.Sarojini, had no right, title and interest in the suit property and therefore, could not have settled the same in favour of respondent No.3/defendant No.2. Furthermore, the claim made, is that, therefore, respondent No.3/defendant No.2 has no right to develop the suit property.

7.1. It is clear that the suit filed by respondent No.1 was not defended by either private or official defendants, despite being served. As a matter of fact, none of the defendants/respondent No.2 to 5, filed their written statements, which resulted in they being set ex parte, as indicated above.

8. As per the learned Single Judge respondent No.2 to 5/ defendants were served on the following dates : 05.10.2006, 24.01.2006 and 04.01.2006 respectively.

8.1. The suit, as per the record, was filed on 05.12.2005, and leave to sue was obtained by respondent No.1 on 12.12.2005. The suit was numbered on 15.12.2005. As adverted to above, the sale deed, based on which, the appellants claim right, title and interest in the suit property was executed on 09.01.2006, after the suit was instituted and numbered. Given these circumstances, the appellants had moved two applications, i.e., A.No.1409 of 2010 and 1412 of 2010. As indicated above, by virtue of A.No.1412 of 2010, the appellants had sought impleadment in the suit, while, the relief sought in A.No.1409 of 2010, which was, in substance, a consequential relief, leave was

sought to reopen the suit, which was reserved for judgement at that point in time.

8.2. The learned Single Judge dismissed both these applications via the impugned judgement and order dated 27.04.2012. Curiously, the appeal being : O.S.A.No.51 of 2014, which has been filed in respect of the said common impugned judgement and order dated 27.04.2012 is directed against only against the outcome reached in A.No.1412 of 2010.

9. In the background of these circumstances, the defence taken by respondent No.1 before the learned Single Judge was that the appellants could not be impleaded, as the doctrine of "lis pendens" applied to them. The argument being that, since, the appellants had purchased the suit property during the pendency of the suit, albeit, without the permission of the Court, the sale in their favour was bereft of legal sanctity.

10. The appellants, on the other hand, relying on the provisions of Order 1, Rule 10 and Order 22, Rule 10 of the Code of Civil Procedure, 1908 (in short, "CPC"), contended that, since,

interest in the suit property had devolved on them, they had every right to be impleaded as parties to the suit.

11. The submissions before us veered solely around this aspect of the matter.

12. On behalf of the appellants, arguments were advanced by Mr.V.Lakshminarayanan, while, arguments on behalf of the contesting respondent, i.e., respondent No.1, were advanced by Mr.G.S.Selvatharasu.

13. Mr.V.Lakshminarayanan, made submissions in line with the stand in the pleadings filed by the appellants, while, Mr.G.S.Selvatharasu, on behalf of respondent No.1 relied upon the observations made in the impugned judgement and order.

13.1. Furthermore, Mr.Lakshminarayanan, in support of his submissions relied upon the following judgements :

- (i).Ponnalagu Ammani V. State of Madras, 1966 L.W. 136.
- (ii).Amit Kumar Shaw V. Farida Khatoon, 2005 (2) KLT

806 (SC).

(iii).Thomson Press (India) Limited V. Nanak Builders and Investors Private Limited and Others, (2013) 5 SCC 397.

(iv).V.L.Dhandapani V. Revathy Ramachandran and others, (2014) 4 CTC 814.

14. Though, learned counsel for respondent No.1 did not rely upon any judgements before us, a reference was made to the impugned judgement and order, wherein, the learned Single Judge had noticed judgements cited before him, on behalf of respondent No.1/plaintiff.

14.1. The stand advanced on behalf of respondent No.1 is that, the appellants had acquired interest in the suit property, via sale deed dated 09.01.2006, after the suit had been instituted, albeit, without the leave of the Court, and therefore, the doctrine of "lis pendens", as encapsulated in Section 52 of the Transfer of Property Act, 1882, would apply.

15. On the other hand, it was contended on behalf of the appellants that they were proper and necessary parties to the

proceedings, and being *bonafide* purchasers, who had no notice of the pendency of the suit based on an erroneous application of the doctrine of “lis pendens” they had been denied their right to be impleaded and to, thus, defend the suit on merits. Given the fact that the original defendants upon devolution of interest in the suit property in their favour had shown complete apathy and disinclination to defend the suit, the appellants had every right to be impleaded in the suit to enable the Court to reach a just decision in the matter.

16. In order to appreciate the rival contentions, it has to be borne in mind that the bar and/or prohibition on transfer or to otherwise deal with any property under Section 52 of the Transfer of Property Act would apply, provided the conditions contained therein are fulfilled. The conditions provided in Section 52 are : (i) The suit or proceedings should be pending in a Court of law exercising jurisdiction within the limits of India, excluding the State of Jammu and Kashmir, or, in a Court established beyond such limits by the Central Government. (ii) The suit or proceedings should not be collusive in nature. (iii) The suit or

proceedings should be one, in which, any right qua the subject immovable property is directly and specifically in issue.

16.1. The premise on which, the provisions of Section 52 of the Transfer of Property Act is founded, is that, if, alienation of right in an immovable property, which is directly and specifically in issue, is permitted, no action could be brought to fruition. **(See *Bellamy V. Sabine, (1857) 1 De G & J 566 and Basappa V. Bhimangowda (1928) ILR 52 (Bom) 208 = AIR 1928 Bombay 65*).**

16.2. Therefore, keeping in mind the aforesaid principle, which is a principle based on public policy, the defence that the alienation of the subject property took place in good faith or, was made for value, albeit, without notice of prior pendency of suit or proceedings is not available. (See ***Ceean International Private Lintied V. Ashok Surana, AIR 2003 Cal 263 and Mohd. Ali Abdul Chanimomin V. Bisaheri Kom Abdulla, AIR 1973 Mysore 131***).

16.3. The doctrine of lis pendens, thus, in effect, only creates a right in favour of the affected party to avoid a transfer and/or alienation of the interest in the immovable property, which is directly and specifically in issue, in a pending action. In other words, the transfer or alienation is not rendered void, but is only voidable, at the instance of the affected party.

16.4. On the other hand, sub-rule (2) of Rule 10 of Order 1 of CPC, allows the Court at any stage of the proceedings to either, based upon an application of any party or, suo motu to strike out the name of a party improperly joined or to implead a party, who ought to have been joined or, even join such parties, whose presence may be necessary in order to enable an effective and complete adjudication and to settle all questions involved in the suit. In other words, the Court has the power to join proper and necessary parties to a pending action either based on an application of a party to the proceedings, or suo motu. Proper parties are those, without whose presence, no effective adjudication can take place, while, a necessary party is one, without whom, an effective decree cannot be passed.

16.5. Parallely, Order 22, Rule 10 of CPC, envisages a situation, where, during the pendency of the suit, the interest of a party has either been assigned or devolves on another party. The provision allows for continuation of the suit proceedings by or against the person on whom such interest has devolved. Though, the discretion to allow an application for continuation of a suit, by or against a party, on whom such interest has devolved, vests in the Court, the Court is required to exercise its discretion judicially, and not, based on whim and fancy. (See **Nanjammal V. Eawaramurthi, AIR 1954 Madras 592**).

16.6. While, dealing with an application filed under Order 22, Rule 10 of CPC, the Court is not required to address the merits of the case.

17. Given these broad parameters of the law, the question, which arises for our consideration is : as to whether the learned Single Judge ought to have allowed the appellants' application for impleadment?

18. Before we proceed further, we may like to advert to the decision of the Supreme Court in ***Thomson Press (India) Limited V. Nanak Builders and Investors Private Limited, (2013) 5 SCC 397***, which, according to us, is closest in terms of facts obtaining in the present case.

18.1. This was a matter, in which a suit for specific performance was filed against the owners in 1991, based on an agreement to sell dated 29.05.1986. In and about 1988, an offer was given to the sister concern of the appellant, which was, before the Supreme Court, to take on lease the subject premises. Since, the prospective lessee got wind of the fact that the owners were proposing to sell the subject premises, they filed a suit in 1990 for perpetual injunction against the owners to restrain them from parting with the possession of the subject premises.

18.2. An order of injunction was granted in favour of the prospective lessee. The suit was, ultimately, compromised with the execution of a lease deed and handing over of the subject premises by the owners.

18.3. In the meanwhile, the beneficiaries of the agreement to sell, instituted a suit for specific performance in and about November, 1991, against the owners of the subject premises. On return of summons, the Advocate, who appeared for the owners, made a statement before the Court that, though, the subject premises were in possession of the lessee, the same would not be transferred or alienated pending the disposal of the suit for specific performance.

18.4. Despite such a statement having been made on behalf of the owners, the owners executed a sale deed in favour of the appellant/lessee.

18.5. It is in this background that the Supreme Court was called upon to consider : as to whether the appellant, who had morphed into a transferee-pendente lite and, who had notice and knowledge both of the suit for specific performance and the order of injunction, could be impleaded as a party in the suit for specific performance.

18.6. The Supreme Court, after discussing the law, at great length, came to the conclusion that the appellant was required to be added as a party-defendant to the suit, notwithstanding the

fact that it had entered into a clandestine transaction with the owners, and got the subject premises transferred in its favour.

18.7. In a concurring judgement, authored by Hon'ble Mr.Justice T.S.Thakur (as he then was), the following relevant observations have been made in paragraph 54, 55, 56 and 57.4 :

*"..... 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. To sum up:

**57.1. The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the defendant owners in the suit.**

**57.2. The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to**

**the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.**

**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.**

**57.4. The appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other. ...."**

(emphasis is ours)

19. Having regard to the aforesaid position of law, let us examine the facts in the instant case. The only ground on which, the learned Single Judge dismissed the application for impleadment filed by the appellants, was that, the sale deed had been executed after the institution of the suit, and thus, was hit by the doctrine of "lis pendens", as encapsulated under Section 52 of the Transfer of Property Act. The appellant, as a matter of fact, pleaded that they were bonafide purchasers for value, without notice of the pending proceedings.

19.1. The record also shows that the application for impleadment was filed in August 2006. Respondent No.3/defendant No.2, being the vendor of the suit property, was set ex parte, upon his failure to file written statements, despite service having been effected upon him between January and February 2006. Respondent No.3/defendant No.2, having executed the sale deed with the appellants, abandoned the defence of the suit.

19.2. Clearly, the facts obtaining in the instant case stand on a better footing than those obtaining in the **Thomson Press case.**

20. Given these circumstances, we are of the view that the learned Single Judge ought to have impleaded the appellants as defendants No.5 to 8 in the suit as prayed, as their interest was substantial and not peripheral.

21. For the foregoing reasons, the impugned judgement and order is set aside. The captioned appeal, i.e., O.S.A.No.51 of 2014, is disposed of, in the aforesaid terms. There shall, however, be no order as to costs.

**M.P.No.1 of 2014 in O.S.A.(SR) No.17921 of 2014**

22. This is an application, whereby, the prayer is made that the petitioners/appellants be granted leave to file an appeal against the main judgement and decree dated 09.05.2012, passed in C.S.No.1068 of 2005.

22.1. As indicated above, the judgement and decree is an ex-parte judgement and decree.

22.2. It appears that the petitioners/appellants became aware of the impugned judgement and decree, when, the bailiff attached to this Court, visited the suit premises to take over possession of the same.

22.3. The petitioners/appellants claim that upon admission of O.S.A.No.51 of 2014, they were advised that it will be necessary to assail the aforementioned ex parte judgement and decree dated 09.05.2012. It is, in these circumstances, that the

petitioners/appellants filed an application with the Registry on 21.02.2014, for being issued a certified copy of the impugned judgement and decree. The certified copy was made available to the petitioners/appellants on 24.02.2014.

22.4. Since, execution proceedings had already been taken out by respondent No.1, by instituting the same on 17.12.2012; possession via the bailiff, with police aid, pursuant to the orders of the learned Master, passed in A.No.1396 of 2014, was taken on 10.03.2014. The execution proceedings, thus, terminated on 12.03.2014.

23. In opposition to this application, counsel for respondent No.1 had submitted that there was a delay in filing the application, and therefore, it should be rejected. It was contended that the application had been filed, nearly, two years after passing of the ex parte judgement and decree dated 09.05.2012.

24. According to us, this plea of respondent No.1 deserves to be rejected on the ground that the petitioners/appellants had taken the stand that they became aware of the judgement and decree only, when, bailiff visited the suit property, which at that point in time, was in their possession.

24.1. The petitioners/appellants' averment, in this behalf, as borne from the record, appears to be correct, as on 10.03.2014, they were in possession of the suit property.

25. Given these circumstances, we are inclined to allow the prayer made in the petition.

25.1. Accordingly, the petitioners/appellants will have leave to file an appeal against the judgement and decree dated 09.05.2012, passed by the learned Single Judge.

26. Consequently, the Registry will number the appeal and place the same before the Court for further proceedings.

(R.S.A.,J) (A.Q.,J)  
13.11.2017

Speaking Order/  
Non-speaking order

Index : Yes/No  
Internet : Yes

gg/kk

To

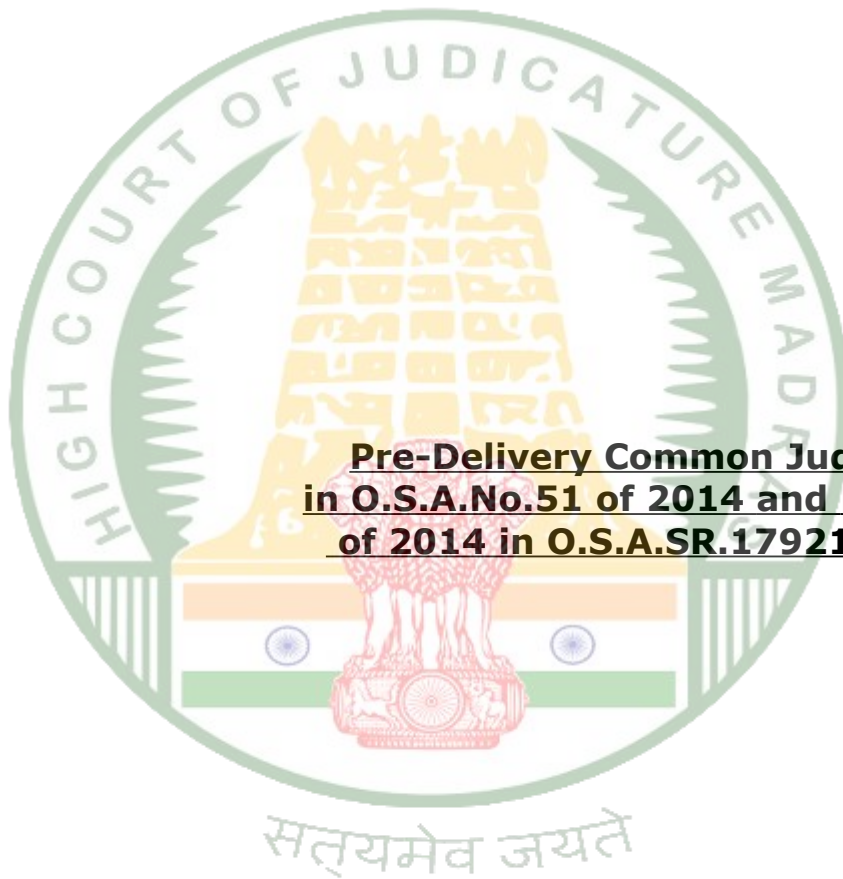
1. The Sub Assistant Registrar (Original Side),  
High Court, Madras.



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**RAJIV SHAKDHER,J.**  
**AND**  
**ABDUL QUDDHOSE,J.**

gg/kk



**Pre-Delivery Common Judgement**  
**in O.S.A.No.51 of 2014 and M.P.No.1**  
**of 2014 in O.S.A.SR.17921 of 2014**

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