

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.2268 of 2015

and

M.P.No.1 of 2015

V.Venkatesh

.. Petitioner

vs

1. V.A.Frances

2. Shamala

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.12.2014 passed by the learned District Munsif, Chengalpattu in I.A.No.1272 of 2014 in O.S.No.15 of 2008.

For Petitioner : Mr.J.Srinivasa Mohan

For Respondents : Mr.Philip Ravindran for R1
Mr.Arunkumar Rajan for R2

ORDER

The plaintiff is the revision petitioner. The revision is filed, aggrieved by the order passed by the Court below in allowing the application filed by the second respondent herein under Order 1 Rule 10(2) of the Code of Civil Procedure to implead her as a party defendant in the suit filed by the petitioner/plaintiff.

2. The petitioner herein filed the suit seeking specific performance of an agreement to sell as against the first respondent and for damages. Pending suit, the first respondent herein had sold the suit property to the second respondent, suppressing the pendency of the suit. Therefore, the second respondent claiming to be the bona fide and innocent purchaser of the suit property has filed the above application seeking to implead her. The same was allowed by the Court below. Challenging the same, the present revision is preferred.

3. Heard both sides.

4. As pending suit, the title has been conveyed to the proposed party, even in the event of success in the suit, the petitioner/plaintiff has to get the property conveyed only from the second respondent/second defendant, who is presently the title holder by virtue of a registered document. Even presuming that she is not a bona fide purchaser having purchased the same pending lis, she becomes the necessary party to the suit.

5. The power of the Court to add a party to a proceeding

cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right.

6. At this juncture, the judgment of the ***Hon'ble Apex Court reported in (2005) 11 SCC 403 [Amit Kumar Shaw and another vs. Farida Khatoon and another]*** could be fruitfully cited. The relevant portion reads as follows:

"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 XXII 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."

7. Considering the aforesaid principles, the Court below allowed the application filed by the proposed party to implead her as a party defendant in the suit filed by the revision petitioner, warranting no interference in this revision.

8. Accordingly, this Civil Revision Petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

18.01.2017

vj2
Index: yes/No
Internet: yes
To

The District Munisf, Chengalpattu

PUSHPA SATHYANARAYANA,J.,

vj2

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