

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4858 of 2011
and
M.P.No.1 of 2011**

R.Jayaraman

.. Petitioner

Vs.

1.S.Rajasundaram

2.Jothi

3.Cuddalore Joint-1, Sub-Registrar,
Cuddalore.

4.The Collector,
Cuddalore District.

5.The Special Officer,
N.G.G.O.'s Co-op. Building Society Ltd.,
Cuddalore – 1.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and Decree made in I.A.No.862 of 2011 in O.S.No.374 of 2002, dated 31.10.2011, on the file of the Additional District Munsif, Cuddalore.

For Petitioner :Mr.D.Ravichander

For Respondents :Mr.C.Prasanna Venkatesh (for R1)

No Appearance (for R2 and R3)

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decreetal order of the learned Additional District Munsif Court, Cuddalore made in I.A.No.862 of 2011 in O.S.No.374 of 2011 dated 31.10.2011 by allowing this revision.

2.The case of the revision petitioner is that the 1st respondent herein namely S.Raja Sundaram has filed the above suit for declaration of his title over the suit schedule of property and for a mandatory injunction to delete the sale in favour of the 2nd respondent/1st defendant namely D.Jothi, which was executed by the 5th respondent. Though the 1st respondent do not have title or possession of the said property, the suit came to be filed by him, as if he possessed a valid title and physical possession over the suit property. In actual, the revision petitioner herein is the absolute owner of the property and he is in physical possession of the suit property.

The suit property was purchased by the revision petitioner from the 2nd respondent herein namely Jothi, vide a registered sale deed dated 07.08.2003 for a valuable sale consideration. Whereupon the petitioner became the absolute owner of the suit property and subsequently the said property was sold to one Mr.Nithyaraj on 19.08.2004 through a registered sale deed by the revision petitioner.

3. Thereafter, the sale in favour of the said Nithyaraj was cancelled by the revision petitioner by executing a cancellation deed dated 25.06.2007. Thus the revision petitioner being the absolute owner, he is under peaceful possession. However, suppressing the above facts and without adding the revision petitioner as a party, the 1st respondent has filed the present suit as if he is the owner of the suit property and as if he is in physical possession. Therefore the revision petitioner has filed the above interlocutory application in I.A.No.862 of 2011, under Order 1 Rule 10 to implead himself as the 5th defendant in the suit. Whereas the learned trial Judge without proper appreciation of the above said facts, has dismissed the revision petitioner's application by holding that he is not a necessary party to the suit, since the relief of declaration of title and the mandatory injunction is sought by the 1st respondent as against the 2nd

respondent and the title dispute solely remains between the 1st and 2nd respondent. It was further held that the revision petitioner is not required to be added as a party to the suit, as he is a subsequent purchaser of the property pendent lit and hence his purchase is hit by Doctrine of Lis pendens. The said approach of the trial Court is totally erroneous and the same is liable to be set aside, hence the present Civil Revision.

4.I heard Mr.D.Ravichander, learned counsel appearing for the petitioner and Mr.C.Prasanna Venkatesh, learned counsel appearing for the 1st respondent and perused the entire records.

5.The learned counsel for the petitioner submitted that the originally the suit property belonged to the 2nd respondent herein and the same was purchased by the revision petitioner for a valuable sale consideration, vide a register sale deed dated 07.08.2003, bearing Document No.1763 of 2003 on the file of the sub registrar, Cuddalore. Thereupon the revision petitioner being the absolute owner of the suit property was in possession over it. In the meantime the suit property was sold to one Nithiyaraj and subsequently the sale was cancelled by the revision petitioner vide a registered cancellation deed dated

25.06.2007. Thus the above transactions would reveal that the revision petitioner is the absolute owner of the suit property and thus he has dealt with the same.

6.It is noteworthy that at any point of time the 1st respondent/plaintiff was neither in possession nor held title over the suit property. However, the trial Court dismissed the petitioner's application by holding that since the revision petitioner is a subsequent purchaser, during the pendency of the suit, such transaction is hit by the doctrine of Lis pendens, under Section 52 of Transfer of Property Act.

7.Further the learned trial Judge failed to appreciate the very fact that the petitioner is a necessary and proper party, since any order made in the suit as a consequence will directly affect the rights of the revision petitioner. The petitioner being a bona fide purchaser, unless otherwise is impleaded as the 5th defendant in the suit, he will be put irreparable loss. Furthermore the learned trial Judge failed to notice that the vendor of the revision petitioner namely Jothi, the 2nd respondent herein had already remained ex-party and hence she may not contest the suit in a proper way. The learned trial Judge, so as to

avoid multiplicity of proceedings ought to have impleaded the revision petitioner as the 5th defendant in the suit.

8. Per contra, the learned counsel for the 1st respondent contended that originally the 1st respondent's father namely Subbarayalu Reddiar owned an extent of 5 Acres and 15 cents of vacant land, in which the suit property is comprised. The entire extent was sold to the 4th respondent housing society, with a condition to allot 2 house site plots at free of cost to Subbarayalu Reddiyar in the above stretch of property. Accordingly the said property was plotted out by 4th respondent and Plot Nos. 58 and 66 stood allotted to the 1st respondent's father and thereafter he was under peaceful possession of the suit property. After his demise the suit property devolved upon the 1st respondent being his sole heir and 1st respondent was under peaceful possession of the suit property. However, in the meantime the 4th respondent society illegally executed a sale deed in respect of the suit schedule of property in favour of the 2nd respondent herein. The 2nd respondent does not have any right what so ever, to execute any sale deed in respect of suit schedule property. Only on proper appreciation of the fact that the purchase by the revision petitioner is

made subsequent to suit, such transaction is hit by Doctrine of Lis pendens.

9. On perusal of the impugned order it is seen that the learned trial Judge has dismissed the revision petitioner's application on the sole ground that the purchase made by the revision petitioner is hit by doctrine of Lis Pendens. Furthermore it is held by the learned trial judge that the revision petitioner is not a necessary party to adjudicate the relief of declaration and injunction claimed by the 1st respondent.

10. The learned counsel for the revision petitioner so as to substantiate his contention relied upon the decision of the Hon'ble Apex Court made in the matter of **Thomson press (India) limited v. Nanak Builders and investors private limited and others** reported in **2013 (5) SCC 397**, wherein it was held that a Transferee/ Purchaser pendente lite may be impleaded in a pending suit. Further it was held that any transfer pendente lite is neither illegal nor void ab initio but remains subservient to rights eventually determined by Court in pending litigation. It was further held that if purchaser pendente lite is not made party to the pending suit, there may be situation where transferor pendente lite may not defend title properly as he has no

interest remaining.

11.The learned counsel for the revision petitioner also made reliance upon a decision of a Division Bench of this Court made in the matter of **V.L.Dhandapani and Ors. v. Revathy Ramachandran and Ors**, reported in **2014 (4) CTC 814**, wherein this Court having reliance upon the decision of the Hon'ble Apex Court in Thomson press (india) limited Vs Nanak Builders, has reiterated that a Transferee pendente lite can be added as party to suit.

12.Now coming to the case on hand, admittedly it is seen from the typed set of papers filed in support of the Civil Revision Petition, the 5th respondent/4th defendant viz., Housing Society has sold the property to the revision petitioner's vendor namely Jothi, who in turn sold the suit property to the revision petitioner for a valuable sale consideration. It would be relevant to note here that during the pendency of the above suit filed by the 1st respondent, for the relief of declaration and mandatory injunction to delete the sale in favor of the 2nd respondent, the suit property is being purchased by the revision petitioner in the year 2003. Further it is noticed by this Court that the 2nd respondent, who is the vendor of the revision petitioner has

remained ex-parte before the trial Court. Hence it is natural that the 2nd respondent/Transferor Pendente lite may not defend his title, as she has no interest remains out.

13. In the said circumstance and in view of the above settled legal proposition and the facts involved in the case on hand, I am of the considered opinion that the revision petitioner is to be added as a party to suit, so as enabling him to defend the suit. Only on due appreciation of oral and documentary evidence produced by either side, the trial Court will be in a position to render proper adjudication over the subject matter. For the foregoing reasons, the order of the learned Additional District Munsif, Cuddalore made in I.A.No.862 of 2011 in O.S.No.374 of 2011 dated 31.10.2011 is not sustained and it suffers from irregularity and the same is liable to be set aside.

14. In the result:

(a) this Civil Revision Petition is allowed and the fair and decreetal order of the learned Additional District Munsif Court, Cuddalore made in I.A.No.862 of 2011 in O.S.No.374 of 2011 dated 31.10.2011, is set aside;

(b) the trial Court is directed to give time for one month from the date of receipt of a copy of this order to file written statement, additional written statement and reply statement, if any to the newly impleaded revision petitioner and others;

(c) thereafter the trial Court shall proceed with the suit and to dispose the same within a period of four months from the date of filing of the written statement by newly impleaded defendant and additional reply statement by others, since the suit is of the year 2011. There is no order as to costs. Consequently connected Miscellaneous Petition is closed.

27.07.2017

Internet:Yes

Index:Yes

vs

To

The Additional District Munsif,
Cuddalore.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.4858 of 2011
and
M.P.No.1 of 2011**

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