

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.No.3584 of 2011
and M.P.No.1 of 2011

1.Jayapal
2.Manimekalai

.. Petitioners

-vs-

1.T.Sakunthala
2.Chinnammal
3.M.S.Raja
4.M.S.Rathinavel
5.Hemamalini
6.Jayalakshmi
7.Chitra
8.P.Suguna

.. Respondents

Prayer:

Civil Revision Petition has been filed against the Petition and order dated 26.08.2011 in I.A No.73 of 2011 in I.A.No.418 of 2010 in O.S.No.260 of 2010, on the file of the Principal Sub Court, Salem.

For Petitioner : Mr.K.Selvaraj,

For Respondent : Mr.V.Sekar for R1.
No appearance for R8.

सत्यमेव जयते
O R D E R

This Civil Revision Petition has been filed to set aside fair and decretal order dated 26.08.2011 in I.A No.73 of 2011 in I.A.No.418 of 2010 in O.S.No.260 of 2010, on the file of the Principal Sub Court, Salem.

2. The petitioner wanted to implead order dated 26.08.2011 in I.A No.73 of 2011 in I.A.No.418 of 2010 himself in O.S.No.157 of 2005, renumbered as O.S.No.260 of 2007, same was rejected by the counter affidavit. The petitioner wanted to purchase a property under Section 52 of the Transfer of Property Act.

3. Aggrieved over by the fair and decretal order, the petitioner has filed the present CRP.

4. By an order dated 19.09.2018, the petitioner was directed to produce a copy of the fair and decretal order before this Court. The case had been regularly listed before Lower Court and is now awaiting for orders of this Court in the present Civil Revision Petition. The said Suit has been filed for a permanent injunction and for a partition of immovable property between the legal heirs of Late M.Subramaniam.

5. The said case was been listed on 03.10.2018 before Lower Court. The learned counsel appearing for the petitioner drew my attention to the decision of the Hon'ble Supreme Court in the case of Thomas Press (India) Limited vs. Nanak Builders and Investors Private Limited and others (2013) 5 SCC 397 which has been followed in Investors Private Limited and others which has been followed by the Division Bench of this Court in the case of V.L.Dhandapani and others vs. Revathy Ramachandran and others 2014(4) CTC 814 and in the case of Sarojamani vs. Ramalingam and others 2014 (1) MWN (Civil) 776.

6. Per contra, the learned counsel appearing for the 1st respondent/ plaintiff herein referred to the decision of the Supreme Court in the case of Bihu Zubaida Khatoon Vs. Nabi Hassan Saheb & Anr (2004) 1 SCC 191.

7. Learned counsel for the respondent submits that the transfer is not only hit by Section 52 of the Transfer of property Act. It was submitted that it is open for the petitioner to work out appropriate remedy under Section 43 of the Transfer of Property Act but cannot have a right over the property which is to be sold by the 5th respondent/4th defendant to the petitioners herein during the pendency of the partition suit.

8. The decision of the Hon'ble Supreme Court in the case of Thomas Press (India) Limited vs. Nanak Builders and Investors Private Limited and others makes it clear that the Court can implead any person at any stage of the proceedings that are pending before the Court.

9. The decision of the Hon'ble Supreme Court in the case of Thomas Press (India) Limited vs. Nanak Builders and Investors Private Limited and others was followed by the Division Bench of this Court in the case of V.L.Dhandapani and others vs. Revathy Ramachandran and others. Para 11 reads as under:

"11. The issue required to be answered by us has already been dealt with in ex tenso by the decision

of the Supreme Court in Thomson Press (India) Ltd., V.Nanak Builders and Investors Private Ltd. and others, 2013 (2) CTC 104 (SC):2013 (5) SCC 397. Therefore we are of the view that the reference as sought for by the learned Single judge is no longer required to be answered. However, as the cases are pending for quite some time and arguments have been made before us on merits, we would like to pass final orders instead of requesting the learned single Judge to decide them. This we do so also for the reason that there is no intra Court Appeal or Revision against the Order of the Learned Single Judge. Therefore, the parties also would not lose any right to approach the Forum before this Court.

13. Considering the scope of Section 52 of the Transfer of Property Act, 1882, after considering all the earlier Judgments, it has been held that Doctrine of lis Pendens does not indeed annul the conveyance or the transfer otherwise, but merely makes it subservient to the rights of the parties to a litigation. Section 52 of the Transfer of Property Act, 1882, does not render transfers affected during the pendency of the Suit as void and a mere pendency of the Suit does not prevent one of the parties from dealing with the property constitute in the subject matter of the Suit. On the contrary, it only postulates a condition that the alienation will in no manner affects the rights of the other party to the Suit.

14. Similarly, on the scope of Order 1, Rule 10, it has been held that a transferee pendente lite can be added as a party to the Suit. Where a transfer is effected, the transferor would lose all his rights and interest in the litigation post transfer. Therefore, it is imperative that the transferee will have to be allowed to step into the shoes of the transferor and prosecute the case in his place. The duty of the Civil Court is to conclude and settle the dispute between the parties instead of driving them to multiply the proceedings. It would be proper to implead all the parties. It cannot be said that a transferee has got no interest in the Suit in which the transferor is a party."

10. In view of the above, the civil revision petition deserves to be allowed. Consequently, impugned order dated 26.08.2011 in I.A No.73 of 2011 in I.A.No.418 of 2010 in

O.S.No.260 of 2010 passed by the learned Principal Sub Court, Salem is set aside. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msv/rri

To

1. The Principal Sub Judge,
Salem.

+1cc to Mr.V.Sekar, Advocate, S.R.No.69434

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.69218

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.69643

C.R.P.No.3584 of 2011
and M.P.No.1 of 2011

RK(Co)
CS/26/11/2018



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