

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2647 of 2015
and M.P.No.1 of 2015

V.Palanisamy

.. Petitioner

Vs.

1.Rajamani

2.A.M.Palanisamy

3.A.M.Subramanian

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 16.04.2015 made in I.A.No.391 of 2013 in O.S.No.8 of 2011 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.P.Saravana Sowmiyan

For R1 : M/s.Abiramavalli
for Mr.A.V.Raja

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ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 16.04.2015 made in I.A.No.391 of 2013 in O.S.No.8 of 2011 on the file of the District Munsif Court, Avinashi.

2.The petitioner is the third party, first respondent is the plaintiff and respondents 2 and 3 are the defendants in O.S.No.8 of 2011 on the file of the District Munsif Court, Avinashi. The first respondent filed the said suit against the respondents 2 and 3, who are her brothers for partition. The suit was filed on 05.01.2011 and on the same day, interim injunction was granted restraining the respondents 2 and 3 from alienating or encumbering the suit properties. The second respondent filed written statement on 29.04.2011 and third respondent filed written statement on 14.02.2012. Third respondent subsequently remained exparte. The petitioner filed I.A.No.391 of 2013 under Order I Rule 10(2) and Section 151 of C.P.C to implead him as third defendant in the suit. According to the petitioner, there was a partition between the respondents 2 and 3 of the suit property and suit property was allotted to the second respondent. The second respondent, his daughter-in-law and his grand son sold the property to the petitioner. In view of the purchase by the petitioner, he is necessary and proper party to the suit.

3.The first respondent filed counter affidavit and denied all the averments and contended that the petitioner purchased the

property on 24.12.2012 pending suit. Suit was filed on 05.01.2011. On the same day ad-interim injunction was granted and after knowing the interim injunction granted and pending suit, the petitioner has purchased the property. The said sale deed is null and void. The petitioner in collusion with respondents 2 and 3 has come out with the present application and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and judgments relied on by the parties, dismissed the application holding that the petitioner is not necessary party to the suit as he purchased the property pending suit.

5.Against the said order of dismissal dated 16.04.2015 made in I.A.No.391 of 2013 in O.S.No.8 of 2011, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner reiterated the averments made in the application and the grounds of revision. In support of his contentions, he relied on the judgment reported in **(2005) 11 SCC 403 (Amit Kumar Shaw and another Vs.**

Farida Khatoon and another):

"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 a party. As already noticed, the Court has discretion in the matter which must be judiciously 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. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

8. From the averments in the affidavit filed by the petitioner for impleading himself as party defendant, it is seen that he has purchased the property on 24.12.2012 from the second respondent and his family members through Power Agent one Kalimuthu. The suit was filed on 05.01.2011. The purchase by the petitioner is subsequent to filing of the suit by the first respondent and after Court has granted interim injunction restraining the respondents 2 and 3 from alienating or otherwise encumbering the suit property on his admitted fact that the petitioner has purchased the property pending suit while interim injunction is in force. The second respondent/vendor of the petitioner is contesting the suit. In view of the fact that the petitioner will be bound by the decree passed in the suit, the petitioner will be entitled to whatever the right his vendor/second respondent gets in the suit. Whether subsequent purchaser is a necessary or proper party can be decided only based on facts of each case. Impleading a subsequent purchaser is discretionary power of the Court. The Court has to exercise this

power judicially. When a lower Court exercises discretionary power in Appeal or Revision, the same cannot be interfered unless the order is arbitrary or not exercised judicially. The learned Judge has exercised the discretionary power properly and dismissed the application by giving cogent and valid reason. Hence, the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 16.04.2015 made in I.A.No.391 of 2013 in O.S.No.8 of 2011.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.03.2018

Index : Yes

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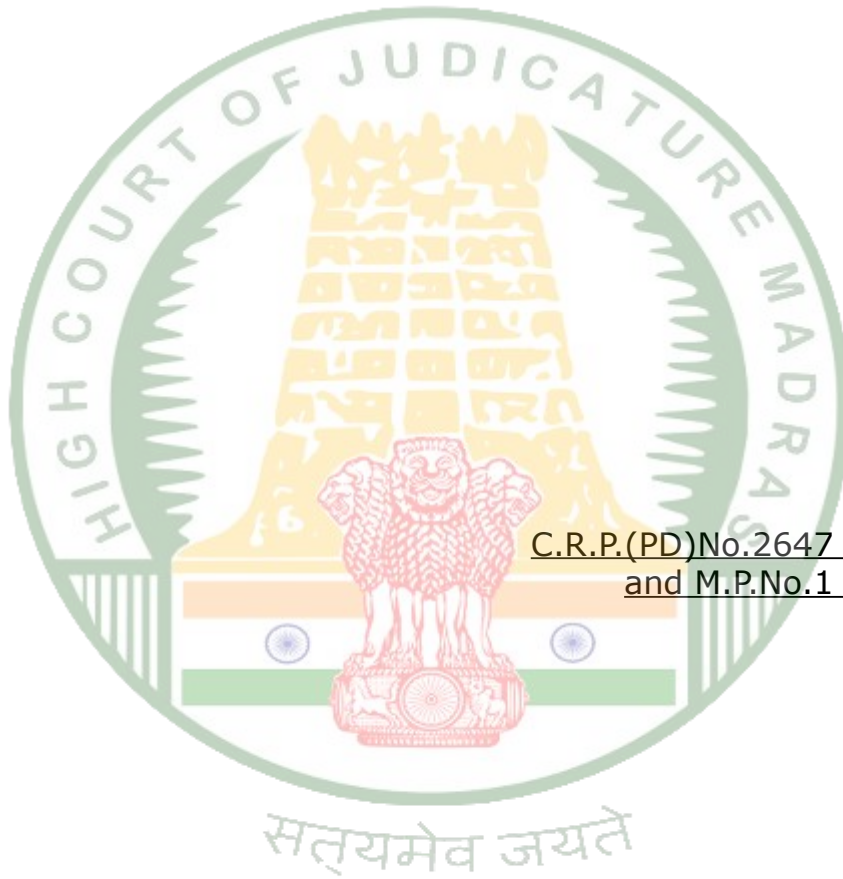
To

The District Munsif,
Avinashi.

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V.M.VELUMANI,J.

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