

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) Nos.651 and 652 of 2018
and
C.M.P.Nos.3378 and 3379 of 2018

Mrs.K.Andal

.. Petitioner
in C.R.P.No.651 of 2018

G.Mythili

.. Petitioner
in C.R.P.No.652 of 2018

Vs

1.Kishore Kumar

2.Sridhar

3.B.Arunkumar

4.The District Registrar,
Villupuram District,
Villupuram.

5.The Sub-Registrar,
Ananthapuram Sub-Registrar Office,
Ananthapuram Village,
Gingee Taluk.

6.Kumaran

.. Respondents
in both C.R.Ps.

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PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order and decretal order dated 08.06.2017 in I.A.No.191 of 2016 in A.S.No.9 of 2016 on the file of the Sub-Court, Gingee.

For Petitioners : Mr.J.R.K.Bhavanantham
(for both C.R.Ps.)

COMMON ORDER

These revision petitions have been filed to set aside the order and decretal order dated 08.06.2017 in I.A.No.191 of 2016 in A.S.No.9 of 2016 on the file of the Sub-Court, Gingee.

2. According to the petitioners, the third respondent filed an application in I.A.No.1234 of 2015 in O.S.No.185 of 2015 under Order 7 Rule 11(D) and Section 151 CPC to reject the plaint and the same was allowed on 15.02.2016. As against the said order, respondents 1 and 2 herein preferred an appeal in A.S.No.9 of 2016 on the file of the Sub-Court, Gingee. Subsequently, respondents 1 and 2 filed C.R.P.(PD)No.589 of 2016 against the 3rd respondent and the said revision petition was dismissed by order dated 26.02.2016.

Aggrieved by the dismissal order dated 26.02.2016, respondents 1 and 2 have filed S.L.P.No.17853 of 2016 before the Hon'ble Supreme Court and the same was dismissed on 26.09.2016. Thereafter, respondents 1 and 2 filed an application in I.A.No.191 of 2016 in A.S.No.9 of 2016 under Order 1 Rule 10(2) of CPC to implead the proposed parties K.Aandal and G.Mythili as respondents in the appeal and the learned appellate Judge allowed the said application on 08.01.2017. As against the order dated 08.06.2017, the petitioners filed the present Civil Revision Petitions.

3.The learned counsel for the petitioners submitted that the Court below erroneously allowed the application. Since the plaint is rejected, there is no question of impleading of subsequent parties as a party to the appeal as they are not a necessary party. Hence, the impugned order dated 08.06.2017 are liable to be set aside.

4.Heard the learned counsel for the petitioners and perused the materials available on record.

5.On a perusal of the records it is seen that the appellate Court relying on the decisions of this Court in **Nachammal vs.**

Lavangammal [2006 (3) CTC 543], S.G.Kannappan vs. Murugan [2001 (4) CTC 730] and Bakthavatsalam vs. Anjapuli and 5 others [2001 (1) CTC 19] rightly allowed the application holding that the proposed parties are purchasers and they have right, interest and title over the suit property.

6.Considering the facts and circumstances of the case, submissions made by the learned counsel for the petitioner and in the light of the decision of the case in **Devaki Thiyagarajan Vs. Ahamed & Others** reported in **2015 (4) CTC 293**, wherein, it has been held as follows:

"66. His Lordship has also observed that Order 1 Rule 10 CPC empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit. It is manifest that Order 1 Rule 10(2) CPC gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the

suit."

Hence, this Court finds no reason to interfere with the impugned order passed by the Court below and is inclined to pass the following order:

"(i)The impugned order dated 08.06.2017 passed in I.A.No.191 of 2016 in A.S.No.9 of 2016 by the learned Subordinate Judge, Gingee is confirmed.

(ii)The Civil Revision Petitions are dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed."

08.03.2018

Index : Yes/ No

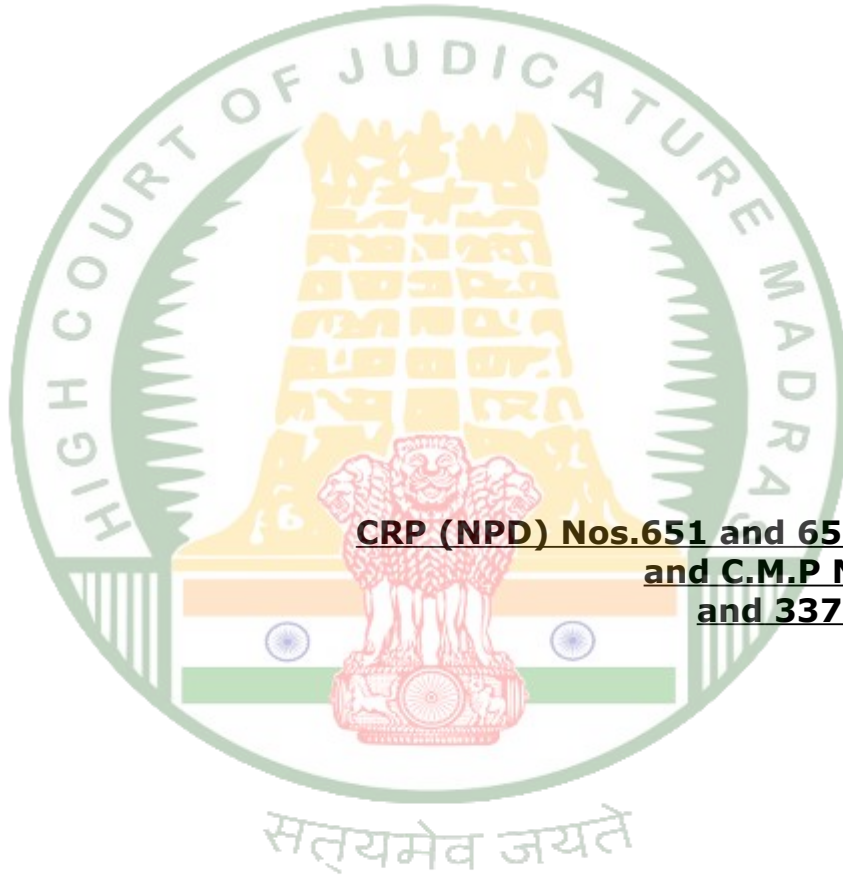
Speaking order/ Non speaking order
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To

The Sub-Court,
Gingee.

D. KRISHNAKUMAR J.,

cla



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64. Mr.R. Thiyagrajan, learned counsel appearing for the appellant/proposed fifth plaintiff has placed reliance upon the catena of decisions in order to support his contention, of which, the decision reported in (2013) 5 SCC 397 between Thomson Press (India) Limited vs. Nanak Builders and investors private limited and others, is very much relevant. 65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y. Eqbal, as under:-

"Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation.

66. His Lordship has also observed that Order 1 Rule 10 CPC empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit. It is manifest that Order 1 Rule 10(2) CPC gives a wider discretion to the court to meet every case or defect of a party and to proceed with a person who is either a necessary party or a proper party whose presence in the court is essential for effective determination of the issues involved in the suit.

70. We have struck a balance between the submissions made on behalf both sides and ultimately found that as observed by the Division Bench of the Apex Court in the above cited decision, the provisions of Order 1 Rule 10(2) of C.P.C., empowers court to add any

person as a party at any stage of the proceedings.

71a.

Further, we do not see any collusiveness between the appellant/proposed 5th plaintiff and the respondents 2 to 5/plaintiffs 1 to 4. Section 52 of T.P.Act is a substantive law, whereas the provisions of Order 1 Rule 10(2) of C.P.C., is a procedural law. Even though the respondents 2 to 5/plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present suit, Order 1 Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the proceedings either as plaintiff or defendant upon or without any application of either party, whose presence appears to be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

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67. On coming to the given case on hand, after filing the application by the appellant/proposed 5th plaintiff seeking for her impleadment, the respondents 2 to 5/plaintiffs 1 to 4 have brought down their volume and apparently have allowed the appellant/proposed 5th plaintiff to speak on their behalf as well as on her behalf.

68. On the other hand, the first respondent/proposed 5th defendant alone has claimed that he had purchased the plaint 'B' Schedule property from the 8th respondent/D3.

69. According to him, the present suit in C.S.No.462 of 1999 is hit by the doctrine of res judicata.

71. As afore stated in the earlier paragraphs, the respondents 2 to 5/plaintiffs 1 to 4 have not alienated the suit property in favour of the appellant/proposed 5th plaintiff with the permission of the court. However, as argued by Mr. R. Thiyagarajan, since the respondents 2 to 5/plaintiffs 1 to 4 have allegedly sold the suit property in favour of the appellant/proposed 5th plaintiff, they might not show much interest or due diligence in conducting the trial of the suit. Even

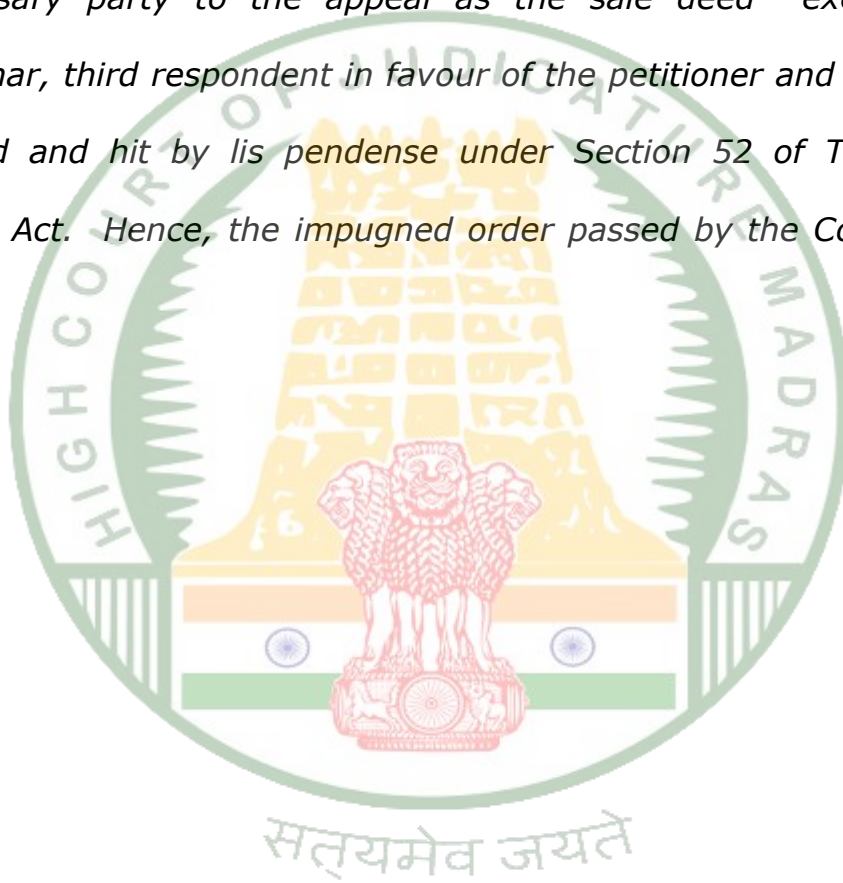
if it is presumed that the appellant/proposed 5th plaintiff is not included as one of the co-plaintiffs to prosecute the suit as against the respondents 6 to 9, she would definitely approach the Court of law with a new suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided that the appellant/proposed 5th plaintiff could be allowed to be impleaded as the 5th plaintiff.

65. In this decision, the Division Bench of the Apex Court has spoken through His Lordship M.Y. Eqbal, as under:-

"Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this section does not indeed annul the conveyance or the transfer otherwise, but renders it subservient to the rights of the parties to a litigation.

and Chennai Jananayaga Madhar Sangam, Rep. by its Secretary, Tmt. J.Juliet vs. S.R.Naidu and Vimala 2009 (6) CTC 103

The learned counsel for the respondent submitted that the petitioner is a necessary party to the appeal as the sale deed executed by Arunkumar, third respondent in favour of the petitioner and another is not valid and hit by lis pendense under Section 52 of Transfer of Property Act. Hence, the impugned order passed by the Court below is valid.



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