

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2018

Pronounced on : 19.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(NPD).No.432 of 2017
and
C.M.P.No.2012 of 2017**

B.Renushree

.. Petitioner

V.

1.G.Karthikeyan
2.V.Vairavel
3.V.Sivakami
4.N.Tamiliniyan
5.S.Sooryamoorthy

.. Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.12.2016 made in E.A.No.63 of 2016 in E.A.No.44 of 2014 in E.P.No.12 of 2014 in O.S.No.262 of 2009 on the file of the learned II Additional District Judge, Erode.

For Petitioner	: Mr.S.Namasivayam
For Respondent-1	: Mr.N.Manoharan for Mr.M.Guruprasad
For Respondents No.2 to 5	: No Appearance

ORDER

Challenging the order passed by the learned II Additional District Judge, Erode in E.A.No.63 of 2016 in E.A.No.44 of 2014 in E.P.No.12 of 2014 in O.S.No.262 of 2009 dated 02.12.2016, the present revision petition has been filed.

2.Heard Mr.S.Namasivayam, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel appearing for the first respondent.

3.The brief facts of the case is as follows:

The petitioner herein is the first defendant in the suit filed by the respondents 2 and 3 herein for declaration of title over the suit properties and is also the petitioner in the counter claim. The present revision is filed against an order allowing an application filed in the Execution Petition granting leave to the first respondent herein to file his reply counter in the claim petition.

4.The first respondent herein, is admittedly, the purchaser of the suit properties from the plaintiffs through a sale deed dated 22.02.2010, when the original suit in O.S.No.262 of 2009 was pending. Subsequently, he came to be impleaded in the suit. On

31.01.2013, the suit came to be dismissed for default and the counter claim was decreed in favour of the petitioner herein. Thereafter, the petitioner herein had filed the execution petition in E.P.No.12 of 2014, seeking for delivery and possession of the suit properties, in execution of the decree in the counter claim. At this juncture, the first respondent herein had filed an application in E.A.No.44 of 2014 under Order 21 Rule 58 of the Civil Procedure Code, raising certain objections. When the said application was resisted by the petitioner through a counter, questioning the maintainability of the application, the first respondent had filed two applications in I.A.Nos.270 & 271 of 2015 seeking to condone the delay in filing the application to set aside the ex-parte order. Both the applications came to be dismissed, as against which, the first respondent had filed two revision petitions in CRP.Nos. 707 and 708 of 2016 before this Court, which also came to be dismissed on 23.09.2016. In the meantime, the first respondent had filed a suit in O.S.No.85 of 2016, which was later withdrawn.

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5. Pending the application filed under Order 21 Rule 58 of CPC., by the first respondent, an application in E.A.No.63 of 2016 was filed, seeking leave to file a reply to the counter petition in E.A.No.44 of 2014. The Execution Court had allowed the said application mainly on the ground that the Madras High Court had

observed in the order passed in CRP.Nos.707 & 708 of 2016 that the rights of the first respondent herein can be decided in the application filed under Order 21 Rule 58 CPC and thereby directed the said application to be decided after enquiry. The further observation of the Execution Court was that the issues involved in the Execution Petition cannot be determined in the present application seeking for leave to file a reply counter and thereby allowed the said application. Challenging the same, the present civil revision petition is filed.

6.The learned counsel for the petitioner challenges the impugned orders primarily on two grounds. Firstly, that in the guise of a reply counter to the counter claim, the petitioner is not entitled to seek for a full fledged trial in the Execution Petition, since he is a transferee pendente lite. Secondly, he would submit that the application in E.A.No.44 of 2014 cannot purportedly be filed under Order 21 Rule 58 of the Civil Procedure Code itself, since the provision pertains only to adjudication of objections to attachment of properties, under execution of a decree. In support of his submissions, the learned counsel for the petitioner relied upon the decisions of the Hon'ble Apex Court reported in **2008 (7) SCC 144 [Usha Sinha V. Dina Ram and others], 1998 (3) SCC 723 [Silverline Forum Pvt. Ltd., V. Rajiv Trust and another]** and

2003 (1) LW 551 [Banumathi @ Karunaiammal V. 1.A.P.Athanari, 2.A.P.Karunalayan, 3.Dhanammal & 4.Guruval] and submitted that a transferee pendente lite is not entitled to get his claim adjudicated.

7.Mr.N.Manokaran, learned counsel appearing for the first respondent on the other hand submitted that the first respondent herein is a bona-fide purchaser of the suit properties from the plaintiffs and the scope of a transferee pendente lite has been enlarged by a decision of the Hon'ble Apex Court reported in **2013 (2) CTC 104 [D.Raja Prabakaran Vs.Suyambulingam (Died), 1.Thirumalai Nambi @ Kumar & 2.Aruna Devi]**. He further submitted that since a separate suit is barred under Order 21 Rule 58 of CPC., questions including questions relating to title, right or interest in the property are relevant for adjudication of the claim petition and therefore, the application under Order 21 Rule 58 CPC was maintainable. He would further submit that earlier when this Court had disposed of the civil revision petitions in CRP.Nos.707 & 708 of 2016, there was a direction by this Court to the Executing Court to decide the rights of the revision petitioners in E.A.No.44 of 2014 filed under Order 21 Rule 58 CPC., on merits and in accordance with law and therefore, there was no infirmity in the present impugned order of the Execution Court in granting leave to

file a reply counter.

8.I have given careful consideration to the submissions made by the respective counsels.

9.Though the orders under challenge in the present applications are limited to the scope of granting leave to the first respondent herein to file a reply counter to the claim petition, it necessitates this Court to go to the root of the application filed by the petitioner under Order 21 Rule 58 which effectively gave way to the first respondent herein to file the instant application. In other words, in case, the petitioner did not have a right to maintain the application under Order 21 Rule 58 CPC., the consequent impugned order granting leave to file the reply counter itself will not be maintainable. In this background, the legal position on the maintainability is now taken up for consideration.

10.There is no dispute to the fact that the first respondent herein had purchased the suit properties from the plaintiff when the suit in O.S.No.262 of 2009 was pending. It is an admitted fact that the first respondent purchased the suit properties on 22.02.2010 from the plaintiffs and the suit came to be disposed of only on 03.10.2012. The decree in the suit as well as counter claim has

also became final.

11. The doctrine of Lis pendens, insofar as it relates to the rights of a transferee pendente lite has been well settled by a series of decisions of the Hon'ble Apex Court. The legal position stands to the effect that the transferee pendente lite will have no independent right to the property to resist or obstruct execution of a decree. Such a well laid down proposition is on the basis that the transferee pendente lite cannot put forth any obstructions to the execution of the decree in his "own right" and therefore, will not be entitled to have his claim adjudicated.

12. The Hon'ble Apex Court in a decision reported in **2008 (7) SCC 144 [Usha Sinha V. Dina Ram and others]** had recognized the doctrine of Lis pendens and had reiterated that the purchaser of a property pending a suit cannot seek right to determine the objections raised by him against the execution proceedings. Some of the decisions relied upon by the learned counsel for the petitioner in this regard are as follows:

1) 2008 (7) SCC 144 [Usha Sinha V. Dina Ram and others]

"23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of

decree passed by a competent Court. The doctrine of 'lis pendens' prohibits a party from dealing with the property which is the subject matter of suit. 'Lis pendens' itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order XXI.

29. The High Court, in our opinion, rightly held that the appellant could not be said to be a 'stranger' to the suit inasmuch as she was claiming right, title and interest through defendant Nos. 4 and 5 against whom the suit was pending. She must, therefore, be presumed to be aware of the litigation which was before a competent Court in the form of Title Suit No. 140 of 1999 instituted by the present respondent against the predecessor of the appellant."

2)2003 (1) LW 551 [Banumathi @ Karunaiammal V. 1.A.P.Athanari, 2.A.P.Karunalayan, 3.Dhanammal & 4.Guruval]

"5. In *NARAYANA SARMA, N.S.S. v. GOLDSTONE EXPORTS P.LTD.* (2001(4) CTC

755), the Supreme Court would hold that if an obstructor admits that he is a transferee pendente lite, it is not necessary to determine the question raised by him that he was unaware of the proceedings when he purchased the property. The relevant portions are these:

"If the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. In other words, the court is not obliged to determine a question merely because of the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question

regarding its validity should be decided during execution proceedings."

6. Under Rule 102, it is provided "Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any person.

7. In the case on hand, the petitioner herself would admit in the petition that she purchased the suit property on 26.4.1999 while the suit in O.S. No. 1306 of 1981 was pending. Under those circumstances, the execution Court need not entertain the petition to determine the fact that the petitioner was unaware of the litigation when she purchased the property and the question regarding the validity of the transfer made by the decree-holder to third party. Therefore, I do not find any merit in the civil revision petition and accordingly, the same is dismissed. Consequently, C.M.P. No. 16377 of 2002 is also dismissed."

3)1998 (3) SCC 723 [Silverline Forum Pvt. Ltd., V. Rajiv Trust and another]

"10.It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the

decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under rule 97 or rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in [Section 52](#) of the Transfer of property Act.

11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such

questions must be relevant to the adjudication of the complaint.

12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which executing court is obliged to determine under rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g. if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. in the adjudication process envisaged in order 21 Rule 97(2) of the Code, execution court can decide whether the question raised by a resistor or

obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section."

Thus, the rights of the transferee pendente lite will be restricted to the terms of the decree and nothing more.

13. The learned counsel for the first respondent made a submission that he was a bona-fide purchaser of the suit property and that the rights of a transferee pendente lite has been enlarged by the Hon'ble Apex Court in a judgment in **2012 (7) SCC 738 [A.Nawab John and others Vs. V.N.Subramaniam]**, the issue as to whether the first respondent herein was a bona-fide purchaser or not, may not be germane to determine since the scope and rights of such transferee is very limited to the effect that he would be, in any event, bound by a decree in the suit. In the decision of the Hon'ble Apex Court reported in **2012 (7) SCC 738**, relied upon by the learned counsel for the petitioner, the same proposition has also been reiterated. By relying upon a stray observation of the Hon'ble Apex Court in the said judgment that a pendente lite purchaser's application for impleadment should normally, be allowed or considered liberally, the learned counsel for the first respondent would submit that the scope and right of a transferee pendente lite

has been enlarged. I am not in agreement with such a submission and the observations of the Hon'ble Apex Court in the below paragraphs would clearly establish and restrict the rights of such a purchaser or suffer the same legal rights and obligations of his vendor. The extract below are the relevant observations:

"17. [Section 52](#) of the [Transfer of Property Act](#), (for short 'the T.P. Act') incorporates doctrine of *lis pendens* and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject matter of such suit or proceeding cannot be "transferred or otherwise dealt with", so as to affect the rights of any other party to such a suit or proceeding. The Section is based on the principle:*

".....that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject to be defeated by the some course of proceeding." [Belkamy v. Subina \(1857\) De. GEJ 566 at 588.](#)

Quoted with approval by this Court in [Vinod Seth v. Devinder Bajaj \(2010\)8 SCC 1.](#)

18. It is settled legal position that the effect of [Section 52](#) is not to render transfers affected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

"...The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court."
[[Sanjay Verma v. Manik Roy](#), AIR 2007 SC 1332, para 12]

19. Such being the scope of [Section 52](#), two questions arise: whether a pendente lite purchaser (1) is entitled to be impleaded as a party to the suit; (2) once impleaded what are the grounds on which he is entitled to contest the suit.

20. This Court on more than one occasion held that when a pendente lite purchaser seeks

to implead himself as a party - defendant to the suit, such application should be liberally considered. This Court also held in *Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Another*, AIR 1958 SC 394, that, "justice requires", a pendente lite purchaser "should be given an opportunity to protect his rights". It was a case, where the property in dispute had been mortgaged by one of the respondents to another respondent. The mortgagee filed a suit, obtained a decree and 'commenced proceedings for sale of the mortgaged property'. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to implead herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 of the C.P.C.) to be brought on record to defend her interest because, as a purchaser pendente lite, she would be bound by the decree against her vendor.

21. There is some divergence of opinion regarding the question, whether a pendente lite purchaser is entitled, as a matter of right, to get impleaded in the suit, this Court in (2005) 11 SCC 403, held that :

"... 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 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.” [Emphasis supplied]

22.The preponderance of opinion of this Court is that a pendente lite purchaser’s application for impleadment should normally be allowed or “considered liberally”.

14. On a reading of the above findings, it cannot be said that the scope or right of the transferee pendente lite has been enlarged to the effect to entitle him to raise objections on an execution petition through a full pledged trial.

15. The learned counsel for the petitioner had raised a specific grounds stating that the original application filed by the first respondent herein is not maintainable under Order 21 Rule 58 CPC since the same relates to adjudication of attachment orders. This Court endorses such a submission. For the sake of convenience, Order 21 Rule 58 of CPC is extracted herein:

"58. Adjudication of claims to, or objections to attachment of, property.-

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

b) disallow the claim or objection; or

c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to

sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive."

16. Sub Rule (1) of Order 21 Rule 58 CPC prescribes the mode of adjudication on objections made to "attachment of properties" or "attachment of a property in execution of a decree". I am unable to accept the submission of the learned counsel for the first respondent that the phrase "all questions including questions relating to right, title or interest in the property" would enable the transferee pendente lite to raise his objections through as full pledged enquiry. Apparently, the present adjudication is not on or against an order of attachment. While that being so, the first respondent's claim to declare the property in his favour through an application under Order 21 Rule 58 CPC, particularly, when he happens to be a transferee pendente lite, will not, by any stretch of imagination, be applicable to him. When such an application itself is not maintainable, the question of filing a reply counter to the claim petition will never arise.

17. The affidavit filed in support of the application seeking for

leave to file a reply counter indicates that the first respondent intends to have full fledged enquiry in the execution proceedings. In view of the fact that the first respondent is a transferee pendente lite and that the application filed by him under Order 21 Rule 58 CPC is not one for adjudication of or against an attachment order, it can only be held that the said application itself in E.A.No.44 of 2014 is not maintainable.

18.The Execution Court, while allowing the application in E.A.No.63 of 2016 granting leave to file a reply counter, had observed that the High Court in an earlier order passed in CRP.Nos.707 & 708 of 2016 had directed the Court to decide the application after enquiry. Reading of the order passed by this Court in the said civil revision petitions does not indicate so. The relevant portion of the said order is as follows:

"10. When no decree was passed as against the revision petitioner and when the revision petitioner has not explained the reasons for the delay in a proper manner, the trial Court had rightly dismissed both the applications. Since the application, filed under Order 21 Rule 58 of the Civil Procedure Code before the Executing Court, is pending, the rights of the revision petitioner can be decided in the said

application.

11. In view of the same, I am of the considered view that the revision petitioner can prosecute the application in E.A.No.44 of 2014 and the Executing Court shall decide the rights of the revision petitioner in the said application, on merits and in accordance with law. With these observations, I do not find any error or irregularity in the orders passed by the trial Court. The Civil Revision Petitions are devoid of merits and the same are dismissed. No costs. Consequently, connected CMP is closed."

What this Court had indicated in the above observation is that the application filed by the first respondent herein under Order 21 Rule 58 CPC claiming certain rights was pending and therefore, had directed the Executing Court to decide the same on merits and in accordance with law. The phrase "in accordance with law" would only mean that the Executing Court was required to apply the correct position of law. As observed above, when the application under Order 21 Rule 58 itself is not maintainable, consequently, the application seeking for leave to file a reply counter also would not be maintainable.

19. For all the foregoing observations, this Court is of the view

that the application filed seeking leave to file a reply counter to the counter claim is opposed to law. Accordingly, the fair and decreetal order dated 02.12.2016 passed by the learned II Additional District Judge, Erode in E.A.63 of 2017 in E.A.No.44 of 2014 in E.P.No.12 of 2014 in O.S.No.262 of 2009 is set aside. Consequently, the Civil Revision Petition is allowed. Connected Miscellaneous Petition is closed. No costs.

19.12.2018

Index : Yes/No

Order :Speaking/Non Speaking

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To

The II Additional District Court,
Erode.

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M.S.RAMESH, J.

DP



Order made in

**CRP.(NPD).No.432 of 2017
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