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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1636 of 2015

and

M.P. (MD) No.1 of 2015

Muthupandi

.. Petitioner/2nd Petitioner/
Proposed 2nd Plaintiff

vs

1.Thangapandian

2.Gomathy

3.Perumalpandi

4.Murugan

... 1 to 4 Respondents/ 1 to 4 Respondents
Defendants

5.Rajendiran

.. 5th Respondent/1st Petitioner/Plaintiff

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the Fair Order and Decreetal Order passed in I.A.No.8 of 2015 in O.S.No.436 of 2013 dated 19.02.2015 on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioner : Mr.R.T.Arivukumar

For Respondents : No Appearance

ORDER

The instant Civil Revision Petition is filed by the Revision petitioners as against the dismissal of impleading Petition seeking to implead the 2nd Petitioner herein as 2nd plaintiff in the suit for declaration and permanent injunction filed by the 1st Petitioner herein against the Respondents herein.

2.The case of the Revision Petitioners is that the 1st petitioner herein as plaintiff filed the suit in O.S.No.436 of 2013 on the file of the Additional District Munsif Court, Sankarankovil for declaration and permanent injunction. According to the Plaintiff/1st Petitioner, he has purchased the suit property under a registered sale deed dated 21.01.2013 from one Nanbirajan. After purchase, he has also mutated the Revenue records in to his name. Pending suit, he sold the suit property to the 2nd Petitioner herein for a valid sale consideration by way of registered sale deed dated 25.11.2014. Since the 2nd Petitioner purchased the suit property, he filed an application in I.A.No.8 of 2015 in O.S.No.436 of 2013 to implead himself as 2nd plaintiff in the suit



so as to enable him to prosecute the suit further in the place of the 1st plaintiff.

3. The above said impleading application was objected by the Respondents herein, contending that the lis is between the 1st Petitioner herein and the Respondents herein. The 2nd Petitioner herein is not a bonafide purchaser and the alleged sale deed dated 25.11.2014 is not a valid one in the eye of Law. The Petition is filed only to delay the disposal of the suit. Further, the purchase of the suit property by the 2nd Petitioner herein is hit by the Lis'pendence U/Sec. 52 of the Transfer of Property Act. Hence the Respondents prayed to dismiss the impleading Petition.

4. The learned Additional District Munsif Court, Sankarankovil, dismissed the application on the ground that the sale was effected during the pendency of the suit and the same is hit by the Principles of lis-pendent.

5. I heard Mr. R. T. Arivukumar, learned counsel for the Petitioner. There is no representation on behalf of the Respondents though notices were received by them and their names appeared in the cause list. I perused all the records filed by the petitioner.

6. Now the only question would arise before this Court is that whether the impleadment of the 2nd Petitioner herein as 2nd plaintiff in the suit is just and necessary?

7. In this context the learned counsel for the Petitioner herein would draw the attention of this Court to the decision reported in **2014 (3) L.W 769 in the case of V.L.Dhandapani -Vs- Revathy Ramachandran and others**, wherein the Hon'ble Division Bench of our High Court held as follows:

"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 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. The following paragraphs of the Supreme Court are apposite:

26..... 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 to render it subservient to the rights of the parties to a litigation.

31.....From the bare reading of the aforesaid provision, it is manifest that sub-rule (2) of Rule 10 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.

49.The second aspect which the proposed judgment succinctly deals with is the effect of a sale pendente lite. The legal position in this regard is also fairly well settled. A transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation. In Nagubai Ammal & Ors. v. B. Shama Rao & Ors. AIR 1856 SC 593, this Court while interpreting Section 52 of the Transfer of Property Act observed:

"25. The words 'so as to affect the rights of any other party thereto under any decree or order which may be made therein', make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto".

50. To the same effect is the decision of this Court in Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1 where this Court held that Section 52 does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the Court. The following passage in this regard is apposite:



"42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit."

51. The decision of this Court in *A. Nawab John & Ors. v. V.N. Subramanyam* (2012) 7 SCC 738 is a recent reminder of the principle of law enunciated in the earlier decisions. This Court in that case summed up the legal position thus:

"18.....''12...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."

52. We may finally refer to the decision of this Court in *Jayaram Mudaliar v. Ayyaswami and Ors.* (1972) 2 SCC 200 in which were extracted with approval observations made on the doctrine of lis pendens in *bCommentaries of Laws of Scotland, by Bell*. This Court said:

"43....Bell, in his commentaries on the Laws of Scotland said that it was grounded on the maxim: *Pendente lite nihil innovandum*. He observed:

"'It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendency of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced.'"

53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent Court, we do



not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent Court may issue in the suit against the vendor.

56. To the same effect is the decision of this Court in *Amit Kumar Shaw v. Farida Khatoon* (2005) 11 SCC 403 where this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject matter of the dispute. This Court observed:

"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 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 the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

8. The learned counsel would also rely upon the judgment of the Hon'ble Apex Court reported in **2013 (2) L.W.748** wherein it has been held that



"10. The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party defendant to the suit under Order I, Rule 10 CPC. I have no hesitation in concurring with the view that no one other than parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order I, Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order XXII Rule 10 of the CPC, which is as under:

Procedure in case of assignment before final order in suit.

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1). A simple reading of the above provision would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party-defendant. Such being the position all that is required to be examined is whether a transferee pendente lite could in a suit for specific performance be added as a party defendant and, if so, on what terms.

We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in



the litigation post transfer. In *Khemchand Shanker Choudhary v. Vishnu Hari Patil* (1983) 1 SCC 18, this Court held that the position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding. Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite:

6 Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out".

9.As per the dictum laid down by the Hon'ble Division Bench of our High Court and also the decision of the Hon'ble Apex Court, the 2nd Petitioner herein purchased the entire estate that forms subject matter of the suit and therefore he is entitled to be added as party to the suit, i.e. 2nd plaintiff to the suit.

10.The Hon'ble Division Bench Judgment of our High Court cited supra would squarely applicable to the present case on hand. After transfer is effected, naturally the transferor i.e, the 1st Petitioner herein would lose all his rights and interest in the suit post transfer. Therefore, it is imperative on the part of



this Court to allow the 2nd Petitioner herein to step into the shoes of the 1st Petitioner herein and prosecute the suit in his place.

11. In view of the above, this Court is of the considered opinion that the 2nd Petitioner herein is a just and necessary party to the suit in O.S.No.436 of 2013 though he has purchased the litigation property, necessarily, he has to safe guard his right and title in the suit property. By impleading the petitioner not only his right is protected, but it protects rights of the respondents also as against the 2nd petitioner who is a purchaser as the decree which would be passed in the suit will bind upon the purchaser also. In other words by impleading the purchaser, the respondents herein could avoid the multiplicity of proceedings.

12. In the result:

(a) this Civil Revision Petition is allowed and the order and decree made in I.A.No.8 of 2015 in O.S.No.436 of 2013 dated 19.02.2015 on the file of the learned Additional District Munsif Court, Sankarankovil, is hereby set aside;

(b) the trial Court is directed to dispose the suit in O.S.No.436 of 2013 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif Court,
Sankarankovil.

+1cc to Mr.R.T.Arivukumar, Advocate SR.No.66846

VSV

VB/SV/MMS/SAR1/12.06.2018/8P/3C

**order made in
C.R.P. (MD) (PD) No.1636 of 2015
and
M.P. (MD) No.1 of 2015
05.06.2018**