



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.1211 of 2018 (PD)

and

CMP (MD) No.5088 of 2018

1.Vijayarani

2.R.Sathya

3.R.Vijayaprakash

4.R.Deepakraj

... Petitioners

Vs.

1.T.Arunkumar

2.R.Ganesan

... Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A No.798 of 2015 in O.S No.54 of 2011 dated 20.04.2018 on the file of the District Munsif cum Judicial Magistrate, Sivagiri.

For Petitioners : Mr.J.Ashok

For Respondents : Mr.M.P.Senthil

ORDER

The defendants in OS No.54 of 2011 are the revision petitioners herein. The said suit was instituted by one R.Ganesan seeking relief of declaration and permanent injunction. In the said suit, One Dr.T.Arun Kumar filed I.A No.798 of 2015 for impleading himself as a second plaintiff. The grounds set out in the said I.A was that the suit property had been purchased by the said Dr.T.Arunkumar from the original plaintiff. The court below allowed the said I.A by order dated 20.04.2018. The correctness of the said order is under challenge in this Civil Revision Petition.



2. Heard the learned counsel on either side.

3. The learned counsel appearing for the proposed second plaintiff placing reliance on the decision of the Hon'ble Supreme Court reported in **2013 (2) CTC 104 (Thomson Press (India) Ltd vs. Nanak Builders & Investors P.Ltd)** contended that he is entitled to get himself impleaded as a second plaintiff. He drew the attention of this Court to Paragraphs 51, 52, and 53 of the said decision. The Hon'ble Supreme Court invoking Order 22 Rule 10 of CPC held 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.

4. No doubt, the submission of the learned counsel appearing for the contesting respondents has great force. But then, this Court is unable to agree with the said submission for more reasons than one. It is not in dispute that the suit property in OS No.54 of 2011 is also a suit property in OS No.95 of 2005 on the file of the Sub Court, Sankarankovil. The said suit was between one Thirumalai Ganesan and the revision petitioners herein. The said Thirumalai Ganesan is none other than the father of the contesting respondent Dr.T.Arunkumar. The suit property was alienated by Thirumalai Ganesan in favour of one Thangadurai who had in turn sold the same to one Jeyaganesan from who the present plaintiff Ganesan had purchased. In the earlier suit proceedings pending between the contesting respondent's father and the revision petitioner herein, Dr.T.Arunkumar attempted to implead himself on the strength of the very same sale deed which is now projected in the present I.A No.798 of 2015. The said application was dismissed. The same was challenged by Dr.T.Arunkumar before this Court in CRP(MD) No.661 of 2014. This Court by order dated 30.06.2015 sustained the order passed by the Trial Court in the following terms :

"3. The suit in O.S.No.95 of 2005 was instituted by Thiru.Rajendran. During the currency of the suit, the sole plaintiff died and respondents 1 to 4 were permitted to continue the suit. The suit is one for declaration and injunction.

4. The petitioner is the son of Thiru.Thirumalai Ganesan. Thirumalai Ganesan is the second defendant in O.S.No.95 of 2005. The order passed by the Trial Court shows that there was an order of injunction against the second defendant. In spite of the currency of order of injunction, the second defendant executed a sale deed in favour of the petitioner, who is none other than his son.



5.The petitioner has filed the application in I.A.No.541 of 2013, as if he is an innocent purchaser. The father of the petitioner was a party to the suit. He was aware of the nature of litigation and the order of injunction passed by the Trial Court. The Trial Court considered the background facts and arrived at a factual finding that the sale is hit by the doctrine of lis pendens.

6.The suit was filed in 2005. The purchase in question was on 22 April, 2013. This would make the position very clear that it was only to cause prejudice to the plaintiffs, and make them to file applications to implead subsequent purchasers and thereby, to drag on the matter, the second defendant executed a sale deed in favour of his son.

7.The petitioner purchased the property during the currency of an order of injunction. The Court should not come to the aid of those who have no respect to the interlocutory orders passed by the Trial Court during the currency of the suit. The father of the petitioner is already a party to the suit. It is open to him to contest the proceedings. The association of the petitioner, being a subsequent purchaser, is not necessary for an effective adjudication of the matter. I, therefore, do not find any error or illegality in the order passed by the learned Trial Judge."

5.The learned counsel for the first respondent submits that even a person who has purchased a property in violation of an injunction order is entitled to get impleaded. But, had this been the first application by Dr.T.Arunkumar to get himself impleaded, this Court would have allowed it. This Court had taken a different view. But then, since his application for impleading himself in the earlier suit proceedings was not successful, the order dated 30.06.2015 made in CRP(MD)No.661 of 2014 literally stares on the face of record. I cannot ignore the said order.

6.In any event, the suit proceedings instituted by the contesting respondent's father is presently pending at the stage of the first appeal. Therefore, the parties are bound by the ultimate outcome of the appeal proceedings. Hence, in this view of the matter, no real or substantial prejudice will be caused to the first respondent. The court below has not taken into account the order dated 30.06.2015 made in CRP(MD)No.661 of 2014. Since an order of this Court which has got direct bearing was not taken note of, the order impugned in this Civil Revision



Petition is set aside. This Civil Revision Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar(CS-II)

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To

1.The District Munsif cum
Judicial Magistrate,
Sivagiri.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+ 1 CC TO MR.J.ASHOK, ADVOCATE IN SR NO. 79879
+ 1 CC TO MR.M.P.SENTHIL, ADVOCATE IN SR NO. 79641

SKM

BU/MK/RSK/SAR-2 : 19.09.2018 : 4P/6C

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