

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2032 OF 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the proposed defendant in O.S.No.8 of 2011, challenging the order in I.A.No.140 of 2018 in O.S.No.8 of 2011 dated 19.03.2018 passed by the Senior Civil Judge at Sathupally.

The petitioner filed I.A.No.140 of 2018 under Order I Rule 10(2) C.P.C, claiming that he is the subsequent purchaser during pendency of the suit and he is a proper and necessary party to come on record, since there is a possibility of failure of the original vendor to contest the suit and sought for impleadment as one of the defendant in the main suit.

The respondents filed counter denying material allegations, *inter alia* contending that the transaction is hit by Section 52 of Transfer of Property Act, i.e Doctrine of *lis pendens*, as the sale took place during pendency of the suit and prayed for dismissal of I.A.No.140 of 2018.

The court below dismissed I.A.No.140 of 2018 holding that the transaction is hit by Doctrine of *lis pendens* under Section 52 of Transfer of Property Act and he is bound by the decree, if any passed by the vendor, since it is neither void nor voidable transaction.

Aggrieved by the order of the court below, the present civil revision petition is filed on various grounds, mainly contending

that the petitioner is a proper and necessary party to protect the interest in the property, if, for any reason, the original vendor failed to contest the suit. It is contended that, the Trial Court did not consider the contention in proper perspective and drawn attention of this Court to ground no.7 of the grounds to contend that 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 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 virtually interested in the litigation, when 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 XXII Rule 10 C.P.C an alienee pendente lite may be joined as party and based on the said principle, he requested this Court to set-aside the order in I.A.No.140 of 2018 in O.S.no.8 of 2011 dated 19.03.2018 passed by the Senior Civil Judge at Sathupally and permit the petitioner to come on record as defendant No.13 in O.S.No.8 of 2011.

During hearing, learned counsel for the petitioner Sri Parsa Ananth Nageswar Rao reiterated the contentions and placed reliance on the judgment of the Supreme Court in **Thomson Press**

(India) Limited v. Nanak Builders and Investors Private Limited and others¹ and on the strength of the principle laid down in the above judgment, learned counsel for the petitioner contended that the order of the Trial Court is erroneous on the face of record and prayed to set-aside the order of the Trial Court by exercising jurisdiction under Section 227 of the Constitution of India. Learned counsel for the petitioner further contended that the sale deed was not acted upon and there was an agreement between the parties to recover the property and therefore, he is a necessary party.

Whereas, learned counsel for the respondents Sri M. Rajamalla Reddy contended that the petitioner ceased to be an owner, as he executed a registered sale deed dated 13.11.2013 and conveyed the property in favour of Srikala w/o Srirangapuri Murali Mohan for consideration of Rs.12,00,000/-. Therefore, the petitioner is ceased to be the owner and he has no direct interest in the property and consequently, he is not entitled to come on record.

Considering rival contentions and perusing the material available on record, the point that arose for consideration is ***“whether the petitioner/proposed party is still continuing as owner of the property having direct interest in the property. If so, is he entitled to come on record as 13th defendant in a suit filed for cancellation of a decree and judgment in O.S.No.8 of 2011 pending on the file of Senior Civil Judge at Sathupally?”***

¹ (2013) 5 Supreme Court Cases 397

P O I N T:

The petitioner is admittedly a subsequent purchaser during pendency of the suit and filed I.A.No.140 of 2018 in the year 2018. But, by the date of filing the petition, the petitioner ceased to be the owner of the property, in view of execution of Registered Sale Deed dated 13.11.2013 in favour of Srikala for Rs.12,00,000/-. When the petitioner ceased to have any interest directly over the property, he is neither an interested party nor a necessary party to the suit for cancellation of the decree and judgment. To claim relief under Order I Rule 10(2) C.P.C, the party must have direct interest in the subject matter of the suit, otherwise he is not entitled to come on record as a party to the suit.

In **Kasturi v. Uyyamperumal**², the Supreme Court held that, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

Addition of parties should not be made merely to avoid multiplicity of suits if their presence is not necessary for determining the real question. The said power can be exercised on either of the two grounds: (a) Such person ought to have been joined, either as a plaintiff or as a defendant, but is not so joined; or; (b) Without his presence, the question involved in the suit cannot be decided finally and effectively. It cannot be said that the

² 2005 (6) SCC 733

main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary party. Therefore, the question to be settled must be a question in the action which cannot be effectually and completely settled unless he is a party. It is necessary that the person must be directly or legally interested in the action is the answer i.e., he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal right.

The Apex Court in **Razia Begum v. Sahebzadi Anwar Begum & others**³ discussed the scope of Order I Rule 10(2) of C.P.C and held that the interest which the proposed party shall have in the suit to enable him to be impleaded therein, should have direct interest and not a commercial interest.

Similarly, in re, Ibrahim Haji, it is held as follows:--

"Order 1, Rule 10(2), Civil P. C., confers wide discretion to the Court to meet every case of defect of parties but is subject to two limitations, viz., (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under O. 1, R. 1, or R. 3, Civil P.C. and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit if persons who are sought to be impleaded have no subsisting right over the properties and they are sought to be impleaded only for the purpose of getting their evidence, and it would not be proper to make them parties to the suit and that the petitioner apprehension that they would be driven to the necessity of filing a separate suit against these persons is not a sufficient justification to compel the plaintiff to implead them as parties to the suit."

³ 1958 AIR SC 886

Later, the Madras High Court in Firm of **Mahadeva Rice and Oil Mills v. Chennimalai Gounder**⁴ laid down the following principle:

“I am of the opinion that the following tests may be formulated usefully as a guidance in the case of adding of parties under O. 1, R. 10, Civil P. C.:

(1) If, for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded.

(2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject-matter which could still have been decided in the pending suit itself;

(3) The proposed party has a defined, subsisting, direct and substantive interests in the litigation, which interest is either legal or equitable and which right is cognisable in law;

(4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the pending litigation; and

(5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by Courts by adding a new party whose interest has no nexus to the subject-matter of the suit.”

In **Antony Devaraj v. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula, Annai Church rep by the Trustee**⁵, the Madras High Court considered the right of a third party to claim addition of party and it was held as follows:-

“(iii). The person to be added as one of the parties must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to

⁴ AIR 1968 Mad 287

⁵ 2004(2) C.T.C. 183

given on some of the questions involved, but it should make him as necessary witness.

(iv). The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

(v). The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2), C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party.

(vi) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(vii) Persons whose interest would be affected by the litigation are entitled to come on record to protect their interest when those are jeopardized by the persons already on record”

In **Mumbai International Airport vs., Regency Convention Centre**⁶ the Supreme Court gave some illustrations regarding exercise of discretion for adding of parties as follows:-

“1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and

⁶ AIR 2010 SC 3109

10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.

3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms.

According to the principles laid down in the above judgment, the party must have direct interest in the subject matter of the suit. Here, in this case, in view of execution of Registered Sale Deed in favour of Srikala on 13.11.2013, the petitioner ceased to be the owner having no direct interest in the subject matter of the suit. Therefore, on this ground alone, the petitioner is not entitled

to be impleaded as proper and necessary party, since he had no interest in the property.

It is also contended that an agreement was executed by Srikala in favour of this petitioner and the sale deed was not acted upon. But, the agreement would not confer or create any right or interest in the immovable property in view of Section 54 of Transfer of Property Act. Therefore, the alleged agreement holder is not entitled to come on record either as proper or a necessary party to the suit, since such agreement would not create or confer any interest or right in the immovable property. Therefore, the contention of this petitioner that, there is an agreement in favour of this petitioner and the sale deed was not acted upon is without any substance and thereby, this contention is turned down by this Court at the stage of admission itself.

In view of my foregoing discussion, the petitioner is ceased to be the owner and he has no direct or indirect interest in the subject matter of the suit, thereby, he is not a proper and necessary party to the suit and the principle laid down by the Supreme Court in **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others** (referred supra) has no application to the present facts of the case. Hence, I find no error in the order passed by the Trial Court, though the order passed by the Trial Court is contrary to the principle laid down by the Supreme Court in **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and others**

(referred supra) , but on the different ground, the present civil revision petition is dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:29.03.2018

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