IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

CRP (PD) No.4246 of 2009 and
M.P.No.1 of 2009

H.Devaraj ... Petitioner

Vs.

1. A. Sridhar
2. S.Manoharan
3. E.Suganthi
4. L.Lakshmichand
5. M.Senthilkumar ... Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India against the orders dated 23.10.2009 passed in I.A.No.241 of 2009 in O.S.No.64 of 2004 by the District Munsif, Thiruvotriyur.

For Petitioners : Mr.R.Krishnaswami

For Respondents : Mr.L.Rajasekar (for R1)
Mr.R.Rajesh (for R2)
No appearance for R3 to R5

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ORDER

The revision petitioner is the plaintiff in O.S.No.64 of 2004 on the file of the District Munsif, Thiruvotriyur. He filed the said suit for the following reliefs

(i) for declaration of his title to the suit property,

(ii) for a permanent injunction restraining the defendants 1 to 4 from interfering with his peaceful possession and enjoyment of the suit property,

(iii) for a permanent injunction restraining the defendants from alienating or encumbering the suit property,

(iv) for a permanent injunction restraining the defendants from putting up any further construction in the suit property and

(v) for payment of future damages at Rs.1,000/- per day for use and occupation, from the date of plaint.

The defendants filed their written statements denying all the allegations of the plaintiff/ the revision petitioner herein. Subsequently, one Mr.A.Sridar, a third party, filed an application in I.A.No.241 of 2009 in O.S.No.64 of 2004 under Order I Rule 10 of the Code of Civil Procedure praying to implead him as 5th defendant in the said suit. The civil revision petitioner contested the petition, while the defendants to the suit endorsed no objection in allowing the said application

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2. The learned District Munsif, Thiruvotriyur, after analysing the evidence on record, allowed the application vide his fair and decreetal order dated 23.10.2009. Aggrieved over the said orders passed by the trial court, the present revision petition is filed. by the plaintiff.

3. The points that arises for consideration in the instant petition are

1. Whether the first respondent is a proper and necessary party to the suit in O.S.No.64 of 2004 ? and

2. Whether the learned District Munsif, Thirivotriyur was right in allowing the application filed by the first respondent under Order I Rule 10 of the Code of Civil Procedure, even though he purchased the suit property from the defendants during the pendency of the suit?

सत्यमेव जयते

4. Mr.G.R.Krishnaswamy, learned counsel appearing for the revision petitioner contended that since the first respondent purchased the suit property during the pendency of the suit, and he is a transferee *pendent lite*, without leave of the court, he cannot seek impleadment as a party to the suit as a matter of right. He also relied on the decision in ***Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and another reported in***

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2004(1) Supreme Court Cases 191 and contended that the defendants in the suit, were prohibited by operation of Section 52 of the Transfer of Property Act to deal with the property and cannot alienate the property, affecting the right of the present revision petitioner, except with the order or authority of the court. He would further contend that since the defendants did not obtain the authority or order of the court for alienation of the suit property, the alienation made by them in favour of the first respondent would obviously be hit by the doctrine of *lis pendense*, as per the provisions contained in Section 52 of the Transfer of Property Act. He therefore would contend that the trial court has committed an error in impleading the first respondent as 5th defendant, in the suit filed by the revision petitioner.

5. Section 52 of the Transfer of Property Act envisages that

52. Transfer of property pending suit relating thereto

During the pendency in any court having authority [3][[4][within the limits of India excluding the State of Jammu and Kashmir] Government or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and in which any right

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to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

6. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and he cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party, has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of the Code of Civil Procedure, which provides for impleadment of proper or necessary parties. The distinction between necessary and proper party is well known. In ***Udit Nara Singh Malpaharia Vs. Additional Member Board of Revenue, Bihar and another reported in AIR 1963 S.C. 786***, the apex court held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and

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final decision on the question involved in the proceedings.

7. In ***Thomson Press India Ltd. Vs. Nanak Builder & Investers Private Ltd. reported in 2013(3) Scale 26 entries*** , the property was sold and that too in breach of an injunction order. Even in such circumstances, the court directed impleadment of the subsequent purchaser.

8. In the instant case, no order of injunction was passed by the trial court. The specific contention of the learned counsel for the revision petitioner is that the sale deed made by the defendants during the pendency of the suit is null and void. If the sale deed is to be declared as null and void, a direction would have to be issued to the first respondent, the subsequent purchaser, to re-transfer the property back in favour of the defendants and such an order cannot be passed without having the buyer in the suit. Further, if the buyer was not restrained from further alienating, transferring or creating any third party right in relation to the suit property during the pendency of the present suit, there is every possibility of an innocent third party buying it from him, without knowledge of the pendency of the suit in O.S.No.64 of 2009.

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9. In the decision relied on by the revision petitioner in Bibi Zubaida Khatoon (cited supra), the impleadment of the subsequent purchaser was held to be unsustainable, since the impleadment of third party was sought in a suit, which was pending for a long time. It is also factually held that there was an attempt on the part of the subsequent purchaser to complicate and delay the pending suit. In such circumstances, it was held that the subsequent purchaser, who purchased the property during the pendency of the suit, is not a proper and necessary party. But the facts of the present case are entirely different. The specific contention of the first respondent is that he is a bonafide purchaser for value and that the revision petitioner/ plaintiff filed an application before the District Revenue Officer, Ponneri to cancel the patta in favour of the defendants and the same was dismissed on 19.02.2009. His specific contention is that for proper adjudication of the suit, he should be impleaded as a party and if he is not impleaded, great prejudice would be caused to him. The trial court, after analysing the evidence on record, had allowed the application and also given cogent reasons for allowing the petition filed by the first respondent. In the facts and circumstances, I do not see any reason to interfere with the findings recorded by the trial court.

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10. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since the suit is of the year 2004, the learned District Munsif, Thiruvotriyur is directed to dispose of the suit in O.S.No.64 of 2004, within three months from the date of receipt of a copy of this order.

28.06.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

To

The District Munsif, Thiruvotriyur.

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R.HEMALATHA,J.
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