

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP PD NO.4054 of 2013 and
M.P.No.1 of 2013

1.Govindammal
2. Gowri

... Revision Petitioners

Vs.

1. Rangasamy gounder
2. Karthikeyan

... Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India against the order dated 17.09.2013 passed by the District Munsif, Kangeyam in I.A.No.1034 of 2013 in O.S.No.49 of 2006.

For Revision Petitioners : Mr.N.Manokaran

For 1st Respondent : Mr.S.Saravanan

For 2nd respondent : No appearance

ORDER

Revision petition filed against the orders passed by the trial court, dismissing the application, filed to implead the subsequent purchaser, who purchased the suit property, during the

pendency of the suit.

2. The trial court taking note of the fact that since the subsequent purchase is hit by Doctrine of lispendens, subsequent purchaser could not be impleaded. Aggrieved over the same, the revision petitioners/plaintiffs have come up with this revision.

3. Heard both sides.

4. The suit has been filed by plaintiffs seeking declaration of their title in the suit properties and also consequential injunction. It is not in dispute that during pendency of the suit, the 2nd defendant transferred the property in favour of the proposed party. It is the contention of the first respondent herein that the application to implead the proposed party had been filed belatedly, after three years, from the date of purchase.

5. Admittedly, since the property was transferred during the pendency of the suit, the proposed party is only pendente lite purchaser. The plaintiff in order to avoid multiplicity of proceedings, filed an application to implead the subsequent purchaser/proposed party as one of the defendants. Though the right of pendente lite purchaser will depend upon the result of the

suit, impleading of such purchaser in the suit as defendant cannot be said to be against law. The plaintiffs being the dominus litus they have right to seek relief against any defendant. Therefore, this court is of the view that pendente lite purchaser should also to be impleaded as one of the defendants in the suit for effective adjudication. This court in a decision in ***V.L.Dhandapani and others Vs. Revathy Ramachandran and others reported in 2014(4) CTC 814*** held as follows.

14. Similarly, on the scope of Order 1 Rule 10, it has been held that a transferee pendente lite can be added as a party 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.

15. Now coming to the reference made, we are of

the view that in the light of the decision rendered in **THOMSON PRESS (INDIA) LIMITED V. NANAK BUILDERS AND INVESTORS PRIVATE LIMITED AND OTHERS** (2013) 5 Supreme Court Cases 397 that a transferee pendente lite can be impleaded as a party to the suit. However, we make it clear that the question as to whether such a party is entitled to be impleaded will have to be decided from the facts of the case. Accordingly, the reference sought for is answered .

In view of all the above, the order of the trial court rejecting the application to implead the lis pendens purchaser is liable to be set aside.

6. In the result, सत्यमेव जयते

(i) The civil revision petition is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The order of the trial court is set aside and the proposed party is ordered to be impleaded and the plaintiff shall take steps to amend the plaint within a period of two weeks from the date of receipt of a copy of this order.

(iii) The trial court is directed to dispose the suit within six months from the date of amendment.

13.02.2019

Index : Yes / No
Internet : Yes / No
speaking/non speaking
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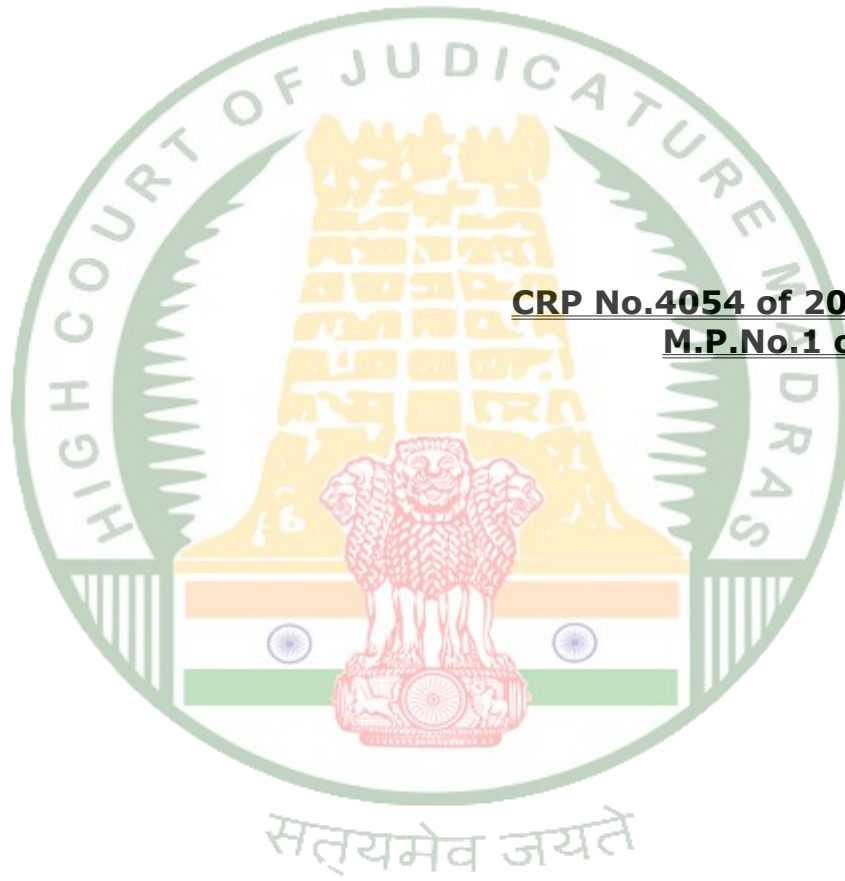
To

The District Munsif, Kangayam.



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N.SATHISHKUMAR, J.
mst



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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 a either 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 pendete lite. The legal position in

this regard is also fairly well settled. A transfer pendete 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 *Commentaries 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."

To the same effect is the decision of this Court in [Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass](#)(deceased) through his Chela Shiama Dass, (1976) 1 SCC 103.

57. To sum up:

57.1 The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.

57.2 The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and subject to any direction which the Court may eventually pass therein.

57.3 Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

57.4 The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other."