

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P (PD).No.1358 of 2014
and
M.P.No.1 of 2014

N.T.Jayasudha

.. Petitioner

vs

1.Poongodi @ Punitha

2.Minor Sukindra

Periya Gounder @ K.C.Periyasamy (died)

P.Jayalakshmi (died)

Alagumani Anandan (died)

3.Ragavi

(Erstwhile Minor now attained majority)

4.Minor Ranjith

(Represented by his next friend
guardian sister Ragavi)

5.M/s.Ponni Sugar Limited,

Cauvery R.S.,

Tiruchengode Taluk, Erode – 8.

6.Kannammal @ Ranganayaki

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to allow the civil revision petition and set aside the fair and decreetal order dated 03.02.2014 made in I.A.No.736 of 2013 in O.S.No.236 of 2008 on the file of Subordinate Judge, Tiruchengode.

For Petitioner : Mr.A.Palaniappan

For Respondents : No appearance

ORDER

Learned counsel for the petitioner is present. Though the names of the respondents have been printed in the cause list, there is no representation today on their behalf. Therefore the case is taken up for hearing.

2. The petitioner is the third party in O.S.No.236 of 2008. She sought to implead herself as a party and therefore filed I.A.No.736 of 2013 in O.S.No.236 of 2008 before the Sub-Court, Tiruchengode.

3. By the impugned order, the lower Court has dismissed the said application filed by the petitioner on the ground that the petitioner who is the purchaser of the seventh item of the Suit Schedule Property from the Defendants No.3 to 5 on 25.06.2012 subsequent to filing of the suit is not entitled to be implead herself.

4. The Court held that if the vendors of the petitioner namely defendants No.3 to 5 had alienable right in respect of Item No.7 of the suit schedule property, then the sale deed obtained by the petitioner is valid one. If they have no right to execute the same, sale of the suit schedule property executed by the petitioner is unsustainable and therefore, the validity of the sale deed will be decided only subject to the title of the defendants No.3 to 5. Aggrieved by the same, the petitioner has filed the present revision.

5. The learned counsel for the petitioner submits that the order passed by the Court is liable to be set aside in the light of the decision of the Honourable Supreme Court in the case of ***Thomas Press (India) Limited Vs Nanak Builders and Investors Private Limited and others reported in 2013, 5 Supreme Court Cases 397***. There the appellant entered into a clandestine transaction with the defendant Sawhneys and got the property transferred in their favour. There the appellant Press was held not to be a bona fide purchaser, without notice. Yet in paragraph 44 it was held as follows:-

44. Having regard to the law discussed hereinabove and in the facts and circumstances of the case and also for the ends of justice the appellant is to be added as party-defendant in the suit. The appeal is, accordingly, allowed and the

impugned orders passed by the High Court are set aside.

6. In paragraphs 53 and 54, it was held as follows:-

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.

54. 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 1 Rule 10 CPC. I have no hesitation in concurring with the view that no one other than the 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 1 Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order 22 Rule 10 CPC, which is as under:

“10.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 1 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 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 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.

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7. In view above decision of the Apex Court, the present Civil Revision Petition deserves to be allowed subject to rider that the suit itself is pending on the date of this Order as the learned counsel for the petitioner is unable to confirm the status of the suit.

C.SARAVANAN,J.
Arb/jen

8.In case the suit is pending, the Subordinate Court, Tiruchengode shall allow the petitioner to file written statement and take up the case for final disposal and dispose the same within a period of six months from the date of receipt of a copy of this Order.

9.The Civil Revision Petition is allowed with above observations. No costs. Consequently, connected Miscellaneous Petition is also closed.

29.04.2019

arb/jen

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1.The Subordinate Court,
Tiruchengode.

2.The Section Officer,
V.R. Section, High Court, Madras.

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and
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