

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2019

**Pronounced on : 29.03.2019
CORAM :**

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(PD).Nos.2748 & 2791 of 2017
and
C.M.P.Nos.13039 & 13185 of 2017**

In CRP.No.2748 of 2017

1.R.Panneerselvam

2.R.Mylsamy

3.K.Arumugam

4.K.G.Somasundaram

.. Petitioners

V.

1.P.Palanisamy @ P.Mani Gounder

2.The Lakshmi Mills Co., Ltd.,
rep. by its Managing Director
No.1100, Avinashi Road,
Pappanaickenpalayam,
Coimbatore-641 037.

3.S.Navaneethan

.. Respondents

In CRP.No.2791 of 2017

The Lakshmi Mills Co., Ltd.,
rep. by its Managing Director
having its Registered Office at
No.1100, Avinashi Road,
Pappanaickenpalayam,
Coimbatore-641 037.

.. Petitioner

1.P.Palanisamy @ P.Mani Gounder

2.R.Panneerselvam

3.R.Mylsamy

4.K.Arumugam

5.K.G.Somasundaram

6.S.Navaneethan .. Respondents

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.11.2016 passed by the learned V Additional District Judge, Coimbatore in I.A.No.37 of 2016 in O.S.No.709 of 2008.

For Petitioners : Mr.M.S.Krishnan, Sr. Counsel
in CRP.2748/17 for Mr.S.Annamalai

For Petitioner : Mr.G.Masilamani, Sr. Counsel
in CRP.2791/17 for Mr.A.Saravanan &
& R2 in CRP.2748/17 Mr.R.Bharath Kumar

For Respondent-1 : Mr.S.Ayyathurai, Sr. Counsel
in both CRPs. for Mr.R.Karthikeyan

For Respondent : Mr.M.Kalyanasundaram, Sr. Counsel
R3 in CRP.2748/17 for Mr.R.Vasudevan
& R6 in CRP.2791/17

For Respondent : Mr.K.V.Subramanian, Sr. Counsel
Nos.2 to 5 For M/s. K.V.Subramaniam Associates
in CRP.2791/17

ORDER

Heard the learned counsels appearing for the parties.

2. The order under challenge in the present Civil Revision Petitions is one under Order 1 Rule 10 of CPC., impleading one P.Palaniswamy @ Mani Gounder as the third defendant, in a suit for specific performance. While the plaintiffs in the suit had challenged the order in CRP.No.2748 of 2017, the first defendant had preferred the revision against the same order in CRP.No.2791 of 2017. Since both the revisions are filed challenging the same order passed in I.A.No.37 of 2016 in O.S.No.709 of 2008, both the revisions are disposed through a common order. For the sake of convenience, the parties in the revisions are addressed, as per their status in the suit.

3. The brief facts of the case are as follows:

a) The suit is for specific performance based on the rights secured by the plaintiffs under a Memorandum of Understanding dated 18.11.2004 and a supplementary Memorandum of Understanding dated 20.07.2005 with the first defendant. The first defendant herein had originally entered into a Memorandum of Understanding dated 18.11.2004 and a supplementary Memorandum of Understanding dated 20.07.2005 with Ramajayam, S.Navaneethan (D2), K.Arumugam (third plaintiff) and

K.G.Somasundaram (fourth plaintiff), agreeing to sell 18.67 acres of land in Uppilipalayam Village, Coimbatore District. While one of the intending purchasers namely, Ramajayam had assigned his rights in favour of the first plaintiff through a Deed of Assignment dated 01.12.2005, the second defendant had assigned his rights in favour of the second plaintiff on 07.12.2005. Since the sale could not be concluded, the suit came to be filed by the aforesaid two assignees, namely, P.Pannerselvam and R.Mylswamy and the third and fourth proposed purchasers namely, K.Arumugam and K.G.Somasundaram against the first defendant herein. Subsequently, the second intending purchaser namely, S.Navaneethan was impleaded as the second defendant in the suit pursuant to an order dated 22.03.2011 passed in I.A.No.282 of 2010.

b) In the meantime, the aforesaid Ramajayam had further assigned his rights over the suit property on 20.02.2006 in favour of the proposed third party namely, P.Palanisamy @ Mani Gounder, who is the impleaded defendant. Pleading ignorance of the pendency of the suit, the impleaded respondent filed an application in I.A.37 of 2016, seeking to implead himself as a third defendant in the suit, on the ground that he had secured rights over the suit property through a Memorandum of Understanding, under a Assignment Deed dated 20.02.2006, executed by Ramajayam in his

favour. By an order dated 28.11.2016, the trial Court had allowed the implead petition, which order is under challenge in both these Civil Revision Petitions.

4. Opposing the order of allowing impleadment, Mr.G.Masilamani, learned Senior counsel appearing on behalf of the first defendant submitted that, the order is ex-facie illegal, since the impleaded defendant has no legal right or privity of contract or right in the contract. Since the impleaded defendant cannot seek for any relief in the present suit, he is not a necessary or a proper party and that he had to work out his remedies elsewhere. By relying upon Section 3 of the Limitation Act, the learned Senior counsel contended that the application for impleadment was hopelessly barred by limitation and that this Court should not give him a limitation right, which he has already lost. By referring to the terms of the Memorandum of Understanding, learned Senior counsel submitted that the assignment is impermissible and therefore, the petitioner has no right to be a part of the suit proceedings.

5. Mr.K.V.Subramanian, learned Senior counsel appearing for the plaintiffs in CRP.No.2791 of 2017, submitted on the same lines as that of the learned Senior counsel for the first defendant adding that, since no relief is sought for against the impleaded defendant, the application itself is an abuse of process of law.

6. Mr.M.S.Krishnan, learned Senior counsel for the plaintiffs in CRP.No.2741 of 2017 submitted that the impleaded defendant is neither a necessary nor a proper party. By making reference to the conduct of the impleaded defendant, in not independently filing a suit seeking for specific performance, he submitted that there is no role for him in the present suit.

7. On the other hand, Mr.Ayyathurai, learned Senior counsel appearing for the impleaded defendant submitted that none of the learned Senior counsels had attacked the findings of the trial court in the impugned order. By referring to the earlier orders of the trial Court passed in I.A.No.282 of 2010 dated 22.03.2011, the learned Senior counsel submitted that when one of the intending purchaser, namely, S.Navaneethan, who had also assigned his right in favour of the second plaintiff, was permitted to be impleaded in the suit, this impleaded defendant, who also has been assigned with the rights of Ramajayam, will also be entitled for a similar relief since he is also a necessary and proper party. By placing reliance on Section 54 of the Transfer of Property Act, the learned Senior counsel submitted that in view of the terms of the agreement, it cannot be said that subject lands are not assignable.

8. Countering the submissions of the learned Senior counsels appearing for the plaintiffs and the first defendant, on the point of limitation, he placed reliance on the proviso to Section 21 and Sub Section 2 therein and submitted that it is for the trial Court after impleadment to decide the question of limitation. It is also his submission that in the instant case, the provisions under Order 22 Rule 10(1) of CPC is attracted. The object of Order 1 Rule 10 of CPC., is to avoid multiplicity of proceedings and in the present case, it is only a multiplicity of issues. Since two assignees and two intending purchasers had jointly filed the suit for specific performance with an alternate prayer for refund, the impleaded defendant would be a necessary and proper party, in case refund is ordered for, in favour of the original intending purchasers under one of whom, the impleaded defendant is an assignee, who has paid a sum of Rs.75 lakhs to the said Ramajayam. By quoting the impleadment of Navaneethan as a second defendant in the suit, the learned Senior counsel argued that for effective adjudication, the impleaded defendant is not only a proper party but also a necessary party.

9. I have given careful consideration to the submissions made by the respective counsels.

10. Before addressing the grounds raised by the counsels appearing for both sides, it would be pertinent to mention here that, the learned Senior counsels appearing for the petitioner(s) in both the Civil Revision Petitions as well as the learned Senior counsel appearing for the impleaded defendant had placed extensive arguments on the Assignment made by Ramajayam in favour of the impleaded defendant as well as the validity of such an Assignment. As a matter of fact, the major arguments by all these counsels were touching upon the power of Assignment. At the conclusion of the arguments, a request was made by the learned Senior counsels appearing for the petitioner(s) that in case, this Court is of the view that the revisions are to be rejected, the issue with regard to the Power of Assignment need not be addressed. The learned Senior counsel appeared for the impleaded defendant also did not have an objection to it. In view of the ultimate decision taken in the present Civil Revision Petitions, this Court is consciously refraining from addressing the issue raised in regard to the power of Assignment made by Ramajayam.

11. This leaves this Court to deal with the two core aspects of submissions made and countered, namely:

- a) Whether the impleaded defendant, who does not seek any relief in the present suit or to whom, no*

relief can be granted, is a necessary or a proper party?

b) When the assignment came to be made in the year 2006 and the suit was filed in the year 2008, the application for impleading, which was filed in the year 2016, is barred by limitation?

All other grounds of arguments by the petitioners, are incidental to the aforesaid two core issues.

12. The Assignment which is alleged to have been executed by Ramajayam assigning his rights in favour of the impleaded defendant under the Assignment Deed dated 20.02.2006 has been disputed by the petitioners herein. A mere denial of the rights to assign is an aspect which requires to be established only after due trial and appreciation of evidences. But the question for determination seems to be that when the impleaded defendant cannot have any relief in the present suit for specific performance, no useful purpose would be achieved by permitting him to be a part of the suit proceedings and therefore, he is neither a necessary nor a proper party.

13. It is not in dispute that the first defendant had entered into a Memorandum of Understanding dated 18.11.2004 and a

supplementary Memorandum of Understanding dated 20.07.2005 with Ramajayam, S.Navaneethan (D2), K.Arumugam (third plaintiff) and K.G.Somasundaram (fourth plaintiff) agreeing to sell 18.67 acres of land in Uppilipalayam Village, Coimbatore District. While Ramajayam had assigned his rights in favour of the first plaintiff through a Deed of Assignment dated 01.12.2005, he had also assigned his rights once again in favour of the impleaded defendant on 20.02.2006.

14. The second defendant had also assigned his rights in favour of the second plaintiff on 07.12.2005. By invoking the rights assigned to him in his favour, the second plaintiff had instituted the suit for specific performance.

15. Initially the second defendant was not made a party to the suit proceedings. It is said that the second defendant herein had filed the suit in O.S.No.358 of 2013 against the second plaintiff, wherein, the suit averments touches upon the validity of the second respondent's Assignment in favour of the second plaintiff. Thereafter, the second defendant had filed an application in I.A.No.282 of 2010 seeking to implead himself in the present suit in O.S.No.709 of 2008. The application to implead was opposed by the plaintiffs as well as the first defendant. However, by an order

dated 22.03.2011, the second defendant was impleaded in the present suit.

16. One of the probable issue that requires to be addressed in the present suit would be on the proposed purchaser's rights to assign under the Memorandum of Understandings dated 18.11.2004 and 20.07.2005. The impleaded defendant claims to have paid a sum of Rs.75 lakhs under the Assignment Deed dated 20.02.2006 to Ramajayam and thereafter, the rights of Ramajayam has been assigned in his favour. The first plaintiff also claims rights through an Assignment from the said Ramajayam through an Assignment Deed dated 01.12.2005. The Assignment in favour of the first plaintiff has also been questioned by the defendants. While that being so, any adverse findings in the issue touching upon the Powers of Assignment would definitely have a bearing on the Assignment claimed to have been made on the impleaded defendant also.

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17. The prayer in the present suit is one for the relief of Specific Performance. The alternate prayer sought for in the suit is for a direction to the first defendant to refund the advance sale consideration made in the Memorandum of Understandings dated 18.11.2004 and 20.07.2005. The plaintiffs 1 and 2 trace their rights

in the Memorandum of Understandings through Assignments made in their favour, have sought for the alternate prayer. The impleaded defendant also claims rights in the Memorandum of Understandings, through a similar Assignment. As such, there exists an inter-se dispute between these Assignees. In case, the alternate prayer sought for in the suit is ordered without consideration of the objections raised by the impleaded defendant, it may result in multiplicity of proceedings.

18. Order 1 Rule 10 of the Civil Procedure Code enables the Court to implead any person, at any stage of the proceedings, whose presence before the Court may be necessary, in order to enable the Court to effectively and completely adjudicate, on all the questions involved in the suit.

19. When the plaintiffs 1 and 2 as well as the first defendant trace their rights through Assignments, the impleaded defendant, who also traces his rights through an Assignment and claims to have paid a sale advance amount of Rs.75 lakhs, would be a party, whose presence in the suit may be required for a proper adjudication.

20. A proper party need not be a necessary party always, whereas a necessary party will also be a proper party to. The consequential question that would gain importance is as to whether, the impleaded defendant is a necessary party or a proper party or both.

21. While a necessary party would be the person in whose absence no effective decree would be passed by the Court, a proper party would be a person, though not a necessary party, whose presence would enable the Court to effectively adjudicate upon all matters in dispute in the suit. Order 1 Rule 10(2) provides for two kinds of persons, who may be added as party to the suit. The first limb of Order 1 Rule 10(2) of CPC., is for impleadment of necessary party. The second limb refers to impleadment of proper parties.

22. Though in the present suit, there cannot be a decree or relief in favour of the impleaded defendant, the very fact that the impleaded defendant questions the rights of the plaintiffs and the eminent issue involved in the suit would also involve in such rights of Assignment, the impleaded defendant is deemed to be a proper party to the suit proceedings and in view of the language employed in Order 1 Rule 10(2) of CPC., his impleadment cannot be termed as "improper".

23. In the decision of the Hon'ble Supreme Court reported in **2010 (7) SCC 417 [Mumbai International Airport Private Limited V. Regency Convention Centre and Hotels Private Limited and others]**, it has been held that the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, gives a discretion to the Court to add any person, who is found to be a necessary party or a proper party. In the said decision, it is also held that a proper party, though not a necessary party is a person, whose presence would enable the Court to completely, effectively and adequately adjudicate upon all matters in dispute, though he need not be a person in favour or against whom the decree is to be made.

24. Therefore, though the impleaded defendant has not sought for any relief in the present suit, or when no relief can be granted in his favour, he is not a "necessary party" to the suit proceedings. But when Ramajayam had assigned his rights in favour of both the first plaintiff as well as the impleaded defendant, touching upon the rights that accrued to him under the Memorandum of Understandings and further in view of the alternate relief of refund sought for in the suit, where the impleaded defendant claims to have paid a substantial amount of Rs.75 lakhs, the terms of the Memorandum of Understandings as well as the

terms of the alleged assignments gains prominence. Furthermore, the incidental issue that may also be addressed is to the validity of the assignment in favour of the first plaintiff in view of the subsequent assignment to the impleaded defendant. In order to effectively determine these issues, the impleaded defendant would be deemed to be a "proper" party to the suit proceedings and as such, the first issue involved in the present revision is answered accordingly.

25. The second limb of arguments of the learned Senior counsel appearing for the plaintiffs and the first defendant is that impleadment of an Assignee is not permissible after long delay. The learned Senior counsel for the first defendant submitted that the original Agreement was executed on 18.11.2004. Therefore, a supplementary Memorandum of Understanding came to be executed on 20.07.2005. The first defendant had issued notice of termination of Memorandum of Understanding on 08.09.2005. The present suit for Specific Performance came to be filed on 28.08.2008. The Deed of Assignment in favour of the first plaintiff was made on 01.12.2005. The second Assignment in favour of the impleaded defendant is alleged to be on 20.02.2006. After an enormous delay, the application in I.A.No.37 of 2016 under Order 1 Rule 10 CPC., came to be filed by the impleaded defendant on 07.09.2015. The

enormous delay between 28.08.2008 till 2015 has not been properly explained and in view of Section 3 of the Limitation Act, the application deserves to be rejected as barred by limitation. Mr.M.S.Krishnan and Mr.K.V.Subramanian, learned Senior Counsels on behalf of the plaintiffs also placed their arguments on similar lines. In support of his submission, Mr.G.Masilamani, learned Senior counsel relied on the decision reported in **2018 (11) SCC 722** in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Others**. The observations of the Hon'ble Apex Court relied upon by the learned Senior Counsel in the said decision reads as under:

11.The stand of respondent No.3 is that it claims as an assignee of the rights of respondent Nos.1 and 2 and that it has the right to continue the suit under Order XXII Rule 10 CPC and the provisions of limitation, do not apply to such an application. To appreciate merits of this contention, we may usefully refer to Order XXII Rule 10 CPC, which reads as under:-

ORDER XXII: DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

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).

Under Order XXII Rule 10 CPC, when there has been an assignment or devolution of interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against person to or upon whom such interest has been assigned or devolved and this entitles CA NO. OF 2017 @ SLP (C) NO. 614 OF 2015 the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the Court for leave to continue the suit. When the plaintiff assigns/transfers the suit during the pendency of the suit, the assignee is entitled to be brought on record and continue the suit. Order XXII Rule 10 CPC

enables only continuance of the suit by the leave of the court. It is the duty of the court to decide whether leave to be granted or not to the person or to the assignee to continue the suit. The discretion to implead or not to implead parties who apply to continue the suit must be exercised judiciously and not arbitrarily.

12.The High Court was not right in holding that mere alleged transfer/assignment of the agreement would be sufficient to grant leave to respondent No.3 to continue the suit. From the filing of the suit in 1986, over the years, valuable right of defence accrued to the appellant; such valuable right of defence cannot be defeated by granting leave to the third respondent to continue the suit in the application filed under Order XXII Rule 10 CPC after 27 years of filing of the suit. The learned Single Judge was not right in saying that impleading respondent No.3 as Plaintiff No.3 would cause no prejudice to the appellant and that the issues can be raised at the time of trial.

13.In a suit for specific performance, application for impleadment must be filed within a reasonable time. Considering the question of impleadment of party in a suit for specific performance after referring to various judgments,

in Vidur Impex and Traders Private Limited and Others v. Tosh Apartments Private Limited and Others (2012) 8 SCC 384 summarized the principles as under:-

"41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a

proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment." In light of the above principles, considering the case in hand, in our view, the application filed for impleading respondent No.3 as Plaintiff No.3 was not filed within reasonable time. No explanation is offered for such an inordinate delay of 27 years, which was not kept in view by the High Court.

The aforesaid observations of the Hon'ble Apex Court may not be a total bar for rejecting the application seeking for impleadment in

view of the certain other observations made in the same decision. The facts involved in the judgment is that the respondent therein was suo moto impleaded without an application under Order 22 Rule 10 of CPC., after a delay of 27 years. The Hon'ble Apex Court was of the view that no explanation was offered for such an inordinate delay of 27 years and therefore, had rejected the implead application. While doing so, it was also observed that in considering the amendment application, the Court should adopt a liberal approach and amendments should be allowed in order to avoid multiplicity of proceedings. A further view is that a mere delay is not a ground for rejecting the amendment and a discretion to implead or not to implead parties who apply to continue the suit must be exercised judiciously and not arbitrarily, which observations has been extracted above. By referring to the facts involved in the case, the Hon'ble Supreme Court held as follows:

14.Be it noted that an application under Order XXII Rule 10 CPC seeking leave of the court to continue the suit by the assignee/third respondent was not actually filed. Chamber Summons No.187 of 2014 was straight away filed praying to amend the suit which would have been the consequential amendment, had the leave to continue the suit been granted by the court.

15.As pointed out earlier, the application was filed after 27 years of filing of the suit. Of

course, the power to allow the amendment of suit is wide and the court should not adopt hyper technical approach. In considering amendment applications, court should adopt liberal approach and amendments are to be allowed to avoid multiplicity of litigations. We are conscious that mere delay is not a ground for rejecting the amendment. But in the case in hand, the parties are not rustic litigants; all the respondents are companies and the dispute between the parties is a commercial litigation. In such facts and circumstances, the amendment prayed in the Chamber Summons filed under Order XXII Rule 10 CPC ought not to have been allowed, as the same would cause serious prejudice to the appellant. In our view, the impugned order, allowing Chamber Summons No.187 of 2014 filed after 27 years of the suit would take away the substantial rights of defence accrued to the appellant and the same cannot be sustained.

Hence, reliance on the aforesaid decisions may not help the first defendant and the plaintiffs.

26. Mr.Ayyadurai, the learned Senior counsel for the impleaded defendant submitted that it is for the trial Court to decide the question of limitation after impleadment and by relying on the proviso to Order 21 as well as Sub Section (2) of CPC., submitted that since the impleadment is owing to an Assignment, it would be

premature to reject the implead application on the ground of limitation. In support of his contention, the learned Senior counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of ***Robust Hotels Private Limited, having registered office at 365, Anna Salai, Teynampet, Chennai-2 and Others V. E.I.H. Limited and Others*** reported in **2010 (6) CTC 192**. In the aforesaid decision, the Hon'ble Division Bench has held that while considering the issue regarding impleadment, the bona-fides of the parties filing such application to implead and the stage of the suit are also relevant factors. Delay cannot be a sole determining factor in deciding such factor, in view of the express provision that the party could take steps at any stage of the suit.

27. Mr.Ayyadurai, learned Senior counsel appearing for the impleaded defendant also placed reliance on the decision of ***Pankajbhai Rameshbhai Zalavadiya V. Jethabhai Kalabhai Zalavadiya (deceased) through Legal Representatives and Others*** reported in **2017 (9) SCC 700** and stated that Order 1 Rule 10 of the CPC., enables the Court to add any person as a party at any stage of the proceedings, if such a person is a proper party and submitted that in view of Order 1 Rule 10 of the CPC., r/w. proviso to Section 21 (2) of the Limitation Act, the implead application cannot be said to be barred by limitation. The relevant

portion of the said decision reads as follows:

10. Order 1 Rule 10 of the Code enables the Court to add any person as a party at any stage of the proceedings, if the person whose presence in Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision. Order 1 Rule 10 of the Code empowers the Court to substitute a party in the suit who is a wrong person with a right person. If the Court is satisfied that the suit has been instituted through a bona fide mistake, and also that it is necessary for the determination of the real matter in controversy to substitute a party in the suit, it may direct it to be done. When the Court finds that in the absence of the persons sought to be impleaded as a party to the suit, the controversy raised in the suit cannot be effectively and completely settled, the Court would do justice by impleading such persons. Order 1 Rule 10(2) of the Code gives wide discretion to the Court to deal with such a situation which may result in prejudicing the interests of the affected party if not impleaded in the suit, and where the impleadment of the said party is necessary and vital for the decision of the suit.

11. In Ramprasad Dagaduram V. Vijaykumar Motilal Hirakhanwala [AIR 1967 SC

278], a bench by majority held that the legal representatives of a party can be added under Order 1 Rule 10 of the Code, but the date on which they were impleaded shall be the date on which the suit was instituted by or against them. In the said matter, this Court on facts held that the suit was barred by limitation as per [Section 22](#) of the Limitation Act of 1908. This Court, though it concluded that the Court has got the power to join a particular person as a party under Order 1 Rule 10 of the Code, did not interfere in the matter inasmuch as this Court found that the suit was barred by limitation. It is relevant to note that the said suit was of the year 1958. Since the Limitation Act, 1963 (now in force) was at that time not in existence, this Court applied the old limitation law and held that the suit was barred by limitation. As of now, the proviso to [Section 21\(1\)](#) of the Limitation Act 1963 empowers the Court to direct that the suit shall be deemed to have been instituted on an earlier date, where the omission to include a new plaintiff or defendant was due to a mistake made in good faith. Therefore, it is open to the plaintiff in the matter on hand to prove "good faith" on his part in not including the legal representatives of deceased defendant no. 7, during the course of trial of suit.

28. Reliance was also placed on (i) **2018 (2) Madras Weekly Notes (Civil) 720 [R.Chandrasekar and others V. Easwari @ K.Rjeshwari and others]** as well as (ii) **2016 (2) Madras Weekly Notes (Civil) 583 [Kalaivani @ Devasena & Minor Rajeswari V. Ramu, 2.Saroja, 3.Vivekandanandan, 4.Siva, 5.Surendran, 6.Pannerselvam, 7.Sankar, 8.Ayyappan, 9.Maragatham and 10.Malarvizhi (R-9 set ex parte)]** and (iii) **2017 (3) Madras Weekly Notes (Civil) 33 [Meivazhi Gopalakrishna Anandar, Meivazhi Chandrasekara Anandar and Meivazhi Kamalamuni Anandar V. Meivazhi Subramania Gounder and 33 Others]**. The observations made in these decisions are also on the same lines which read as follows:

"(i) 2018 (2) Madras Weekly Notes (Civil) 720:-

16.In order to appreciate the rival contentions, it has to be borne in mind that the bar and/or prohibition on transfer or to otherwise deal with any property under Section 52 of the Transfer of Property Act would apply, provided the conditions contained therein are fulfilled. The conditions provided in Section 52 are : (i) The suit or proceedings should be pending in a Court of law exercising jurisdiction within the limits of India, excluding the State of Jammu and Kashmir, or, in a Court established beyond such

limits by the Central Government. (ii) The suit or proceedings should not be collusive in nature. (iii) The suit or proceedings should be one, in which, any right qua the subject immovable property is directly and specifically in issue.

16.1. The premise on which, the provisions of Section 52 of the Transfer of Property Act is founded, is that, if, alienation of right in an immovable property, which is directly and specifically in issue, is permitted, no action could be brought to fruition. (See *Bellamy V. Sabine*, (1857) 1 De G & J 566 and *Basappa V. Bhimangowda* (1928) ILR 52 (Bom) 208 = AIR 1928 Bombay 65).

16.2. Therefore, keeping in mind the aforesaid principle, which is a principle based on public policy, the defence that the alienation of the subject property took place in good faith or, was made for value, albeit, without notice of prior pendency of suit or proceedings is not available. (See *Ceean International Private Limited V. Ashok Surana*, AIR 2003 Cal 263 and *Mohd. Ali Abdul Chanimomin V. Bisaheri Kom Abdulla*, AIR 1973 Mysore 131).

16.3. The doctrine of *lis pendens*, thus, in effect, only creates a right in favour of the affected party to avoid a transfer and/or

alienation of the interest in the immovable property, which is directly and specifically in issue, in a pending action. In other words, the transfer or alienation is not rendered void, but is only voidable, at the instance of the affected party.

16.4. On the other hand, sub-rule (2) of Rule 10 of Order 1 of CPC, allows the Court at any stage of the proceedings to either, based upon an application of any party or, suo motu to strike out the name of a party improperly joined or to implead a party, who ought to have been joined or, even join such parties, whose presence may be necessary in order to enable an effective and complete adjudication and to settle all questions involved in the suit. In other words, the Court has the power to join proper and necessary parties to a pending action either based on an application of a party to the proceedings, or suo motu. Proper parties are those, without whose presence, no effective adjudication can take place, while, a necessary party is one, without whom, an effective decree cannot be passed.

16.5. Parallely, Order 22, Rule 10 of CPC, envisages a situation, where, during the pendency of the suit, the interest of a party has either been assigned or devolves on another party. The provision allows for continuation of the

suit proceedings by or against the person on whom such interest has devolved. Though, the discretion to allow an application for continuation of a suit, by or against a party, on whom such interest has devolved, vests in the Court, the Court is required to exercise its discretion judicially, and not, based on whim and fancy. (See Nanjammal V. Eawaramurthi, AIR 1954 Madras 592).

16.6. While, dealing with an application filed under Order 22, Rule 10 of CPC, the Court is not required to address the merits of the case.

(ii) 2016 (2) Madras Weekly Notes (Civil) 583 :-

11. The respondents 9 and 10 are the daughters of the respondents 1 and 2. So, the apprehension of the plaintiffs is that respondents 9 and 10 also have right to claim over the property by virtue of the Hindu Succession Amendment Act, 2005. A necessary party is one without whom no order can be made effectively; a proper party is one whose presence is necessary for a complete and final decision on the question involved in the proceedings. This Hon'ble Court decided in Ganduri Koteshwaramma & Another Vs.Chakiri Yanadi & Another reported in 2011 (6) CTC 102 has held

as follows:

"Declaration in Section 6 that daughter of coparcener shall have same rights and liabilities in coparcenary property as she would have been a son 10 is unambiguous and unequivocal. There is no implement to pass more than one preliminary decree if after passing of preliminary decree events have taken place necessitating the readjustment of shares as declared in preliminary decree. The Court has always power to revise the preliminary decree or pass another preliminary decree if situation in changed circumstances so demand- Suit for partition continues after passing of preliminary decree and proceedings in Suit get extinguished only on passing of final decree- Respondents/Sisters are entitled to claim share in coparcenary property even after passing of preliminary decree in Suit for partition."

Therefore, Order 1 Rule 10 (2) empowers this Court to implead any party at any stage of the proceedings either as plaintiff or defendant upon or without any application of either party, whose presence appears to be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

**(iii) 2017 (3) Madras Weekly Notes
(Civil) 33 :-**

9. Therefore, in order to avoid multiplicity of proceedings, the respondents 1 to 31/proposed defendants are also necessary parties in the present suit and they can also participate in the suit proceedings, in order to decide the real issue that arose in the suit. In view of the above reasonings, this Court comes to the conclusion that the trial Court, considering all the above aspects, have rightly allowed the impleading application. Hence this Court does not warrant any interference in the order of the Court below. Thus the revision fails and the same deserves dismissal."

The observations in all the aforesaid decisions are self explanatory to the effect that an application for impleadment can be made at any time during the suit proceedings, whose presence is necessary to effectively adjudicate the issues involved in the suit and in view of all the findings made in the foregoing paragraphs, this Court comes to the conclusion that the application for impleadment is not barred by limitation.

29. As observed in the beginning of this order, the learned Senior counsels appearing for the plaintiffs as well as the first defendant had extensively argued on the ground, questioning the rights involved in the Assignment Deeds and thereafter, had made a request to this Court to refrain from rendering any finding on this issue, in case, the Court comes to a conclusion that the impleadment is otherwise, necessary on the other issues.

30. Since this Court is of the view that the impleaded defendant claims a right through an Assignment Deed after payment of sale consideration of Rs.75 lakhs and also taking note of the fact that the plaintiffs 1 and 2 as well as the second defendant also traced their rights through similar Assignments and if any relief is granted in the alternate prayer sought for in the suit, serious prejudice would be caused to the impleaded defendant and may also lead to multiplicity of proceedings and therefore, this Court comes to the conclusion that the impleaded defendant is a "proper party" to the suit proceedings. Hence, the issues touching upon the Assignment rights under the Assignment Deeds are not addressed here.

31. For all the foregoing reasons, I do not find any reason to interfere with the order of the trial Court allowing the application for impleadment. Accordingly, both the Civil Revision Petitions stand dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

32. Since the suit is pending from the year 2008, the trial Court shall endeavor to complete the suit proceedings as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order.

29.03.2019

Index : Yes
Order : Speaking
DP

सत्यमेव जयते

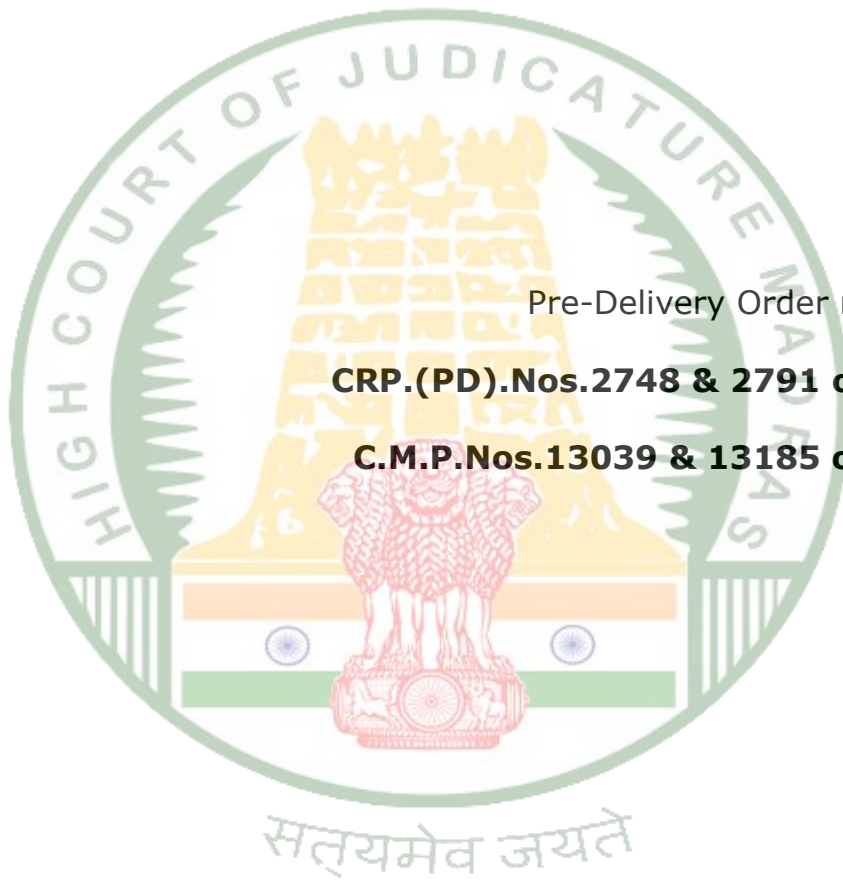
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To

The V Additional District Court,
Coimbatore.

M.S.RAMESH, J.

DP



Pre-Delivery Order made in

**CRP.(PD).Nos.2748 & 2791 of 2017
and
C.M.P.Nos.13039 & 13185 of 2017**

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