



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.86 of 2019

and

CMP(MD)No.434 of 2019

K.R.Dennis Raj ... Petitioner /Petitioner/Proposed 5th Respondent

vs.

Maharajan(died)

1)Muthukani

2)Mahalingam

3)Umadevi

4)Sakthivel Devi

5)Muthulingam

...Respondents 1 to 5/Respondents 2 to 6/

Plaintiffs 2 to 6

Mariappan (died)

6)Sivakami

7)Sivaselvi

8)Shanthini

... Respondents 6 to 8/Respondents 8 to 10/

Proposed Defendants 2 to 4

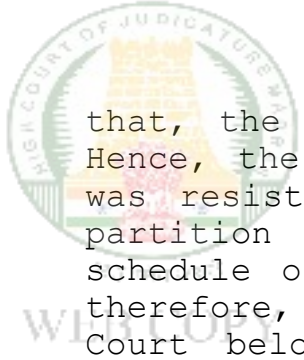
Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.10.2018 made in I.A.No.660 of 2018 in O.S.No.86 of 2011 on the file of the Subordinate Judge, Thoothukudi and set aside the same.

For Petitioner : Mr.V.Sasikumar

ORDER

Aggrieved by the dismissal of the impleading petition, the third party to the suit has filed this revision.

2.The facts of the case are that the respondents 1 to 5 as plaintiffs filed O.S.No.86 of 2011 against one Mariappan for partition. Pending suit, the revision petitioner filed I.A.No.660 of 2018 to implead himself in the suit stating that the defendant Mariappan orally agreed to sell the second schedule property to him, for which, he appointed the petitioner's wife as power of attorney through I.A.No.288/2011 and to prevent the execution of sale deed, the plaintiffs filed the present suit for partition. Pending suit, the power of attorney received several part payment and executed a sale agreement in favour of the petitioner and thereafter the defendant executed the sale deed in favour of the petitioner. After



that, the defendant died due to cancer at Chennai on 05.06.2018. Hence, the petitioner sought to implead himself in the suit which was resisted by the plaintiffs stating that knowing well that a partition suit is pending, the petitioner purchased the second schedule of property and any alienation pending lis, is void and therefore, the petitioner is not a necessary party to the suit. The Court below after hearing both sides, dismissed the impleading petition, against which, the third party has filed this revision.

3.Learned counsel for the petitioner would contend that though the petitioner purchased the property pending suit, since the result of the suit binds the transferee also under the doctrine of lis pendence, the Court below ought to have allowed the impleading petition and further, since the power of attorney of the defendant was appointed through I.A.No.288/2011, the sale is legally valid and therefore, the petitioner is entitled to be impleaded in the suit. Thus, he prayed for allowing this revision petition.

4.Heard the learned counsel for the petitioner.

5.Perusal of record shows that the revision petitioner himself in the impleading petition has admitted the factum of filing of the partition suit in respect of the suit properties and he himself purchased the second schedule of property pending lis. As per Section 52 Transfer of Property Act, 1892, if any transfer of title in respect of immovable property pending litigation, such transfer of title shall be bound by the result of the suit and the learned Judge referred to the judgment of the Supreme Court in Sarvinder Singh vs. Dalip Singh on 2 August 1996 and dismissed the impleading petition holding that the petitioner is not a necessary party as the suit itself is posted for cross examination of PW1 and therefore, I do not find any infirmity in the order passed by the learned Judge.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/ True Copy /

Sub Assistant Registrar(CS-)

To
The Subordinate Judge,
Thoothukudi.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-70788[F] dated 24/06/2019)