



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **27.11.2019**
CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CRP(PD) (MD)No.1075 of 2019
and
CMP(MD)No.5823 of 2019

P.Gopalakrishnan ...Petitioner/6th Petitioner/Proposed 6th Appellant

versus

1. J.Thiruvengadam
2. J.Punithavathiammal
3. J.Thiruvarasu
4. J.Kandhan
5. S.Krishnamoorthy
Rep. by his power agent
P.Gopalakrishnan ...R1 to 5/1to 5 Petitioners/Appellants
6. Rajalakshmi ... R6/Respondent/Respondent

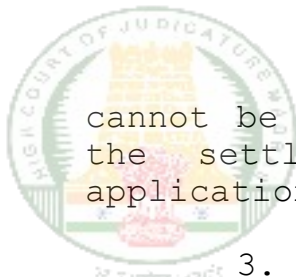
Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 02.02.2019 passed in I.A.No.1 of 2019 in A.S.No.32 of 2007 on the file of the Principal Subordinate Judge, Kumbakonam.

For Petitioner :	Mr.S.Meenakshi Sundaram Senior Counsel for M/s.V.Karthikeyan
For R1 to R5 :	No appearance
For R6 :	Mr.MRS.Prabhu

ORDER

This Civil Revision Petition has been filed challenging the order dated 02.02.2019 passed in I.A.No.1 of 2019 in A.S.No.32 of 2007 by the learned Principal Subordinate Judge, Kumbakonam.

2. I.A.No.1 of 2019 in A.S.No.32 of 2007 was filed before the learned Principal Subordinate Judge, Kumbakonam, to implead the revision petitioner as 6th appellant in A.S.No.32 of 2007. As there was no representation on behalf of the petitioners, the Court below, decided the matter on merits, holding that during the pendency of the proceedings, the settlement deed was executed by the mother of the 5th appellant in favour of the proposed party without obtaining the leave of the Court and therefore, the proposed party



cannot be impleaded as party in the appeal suit, which is against the settled proposition of law and thereby, dismissed the application vide order dated 02.02.2019.

3. Learned Senior Counsel Mr.S.Meenakshi Sundaram, appearing for the revision petitioner contended that since the entire right over the suit schedule property has been settled in favour of the proposed party, the proposed party is entitled to be heard in the appeal proceedings and therefore, the Court below should have impleaded the proposed party as a party to the appeal suit. Further, there is no need for getting prior approval before the settlement of the property in favour of the proposed party, when any proceedings are pending before the Court and therefore, the proposed party can be impleaded as one of the parties to the proceedings.

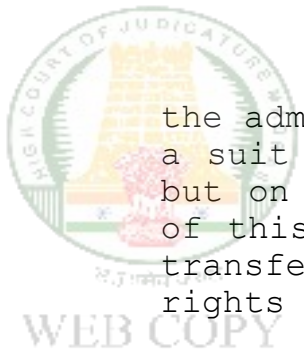
4. The learned Senior Counsel, in order to substantiate his contention, relied upon the Judgment of the Hon'ble Apex Court in the case of **Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and others**, reported in **2013 (5) SCC 397**, wherein, it has been held as follows:

"26. It would also be worth discussing some of the relevant laws in order to appreciate the case on hand. Section 52 of the Transfer of Property Act speaks about the doctrine of lis pendens. Section 52 reads as under:

"52. Transfer of property pending suit relating thereto - During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party thereto under the decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation - For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

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."

27 to 54

55. We are not on virgin ground insofar as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendente lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In *Khemchand Shankar Choudhari vs. Vishnu Hari Patil* (1983 1 SCC 18), this Court held that : (SCC p.21, para 6)

"6. The position of a person on whom any interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding....."

Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite: (SCC pp.20-21, para 6)

"6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound insofar as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But, if he applies to be impleaded as a party and to be heard, he has got to be impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate Court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an Official Receiver who takes over the assets of a party on his insolvency. An heir or a legatee



or an Official Receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out." (emphasis supplied)

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By relying upon the aforesaid Judgment, the learned Senior Counsel contended that there is no impediment for the Court below to allow the application for impleading the revision petitioner as 6th appellant in the above Appeal Suit.

5. The learned Senior Counsel further relied upon another Judgment of the Hon'ble Apex Court in the case of **Pruthvirajsinh Nodhubha Jadeja (Dead) by Legal Representatives vs. Jayeshkumar Chhakaddas Shah and others** reported in **2019 (9) SCC 533**, wherein, it has been held as follows:

"9. MMT had assigned his rights and interest in the land in favour of JCS. Therefore, JCS as an assignee of the rights of the original plaintiff, had a right to be impleaded as a plaintiff in place of MMT."

6. On the other hand, the learned counsel appearing for the 6th respondent submits that during the pendency of case, the suit schedule property was settled in favour of the revision petitioner, therefore, leave of the Court should be obtained. The Court below, after considering all these aspects, dismissed the application, which requires no interference.

7. Heard the learned Senior Counsel appearing for the revision petitioner and the learned counsel appearing for the 6th respondent and also perused the records.

8. On perusal of records, it appears that the mother of the 5th respondent settled the property in favour of the revision petitioner during the pendency of A.S.No.32 of 2007. The settlement was made in the year 2017. After the settlement of property, the revision petitioner obtained the right over the suit schedule property, therefore, the present application in I.A.No.1 of 2019 in A.S.No.32 of 2007 has been filed to implead the proposed party as 6th appellant.

9. It is not in dispute about the settlement of property by the mother of the 5th respondent to the proposed party/revision petitioner herein. The only issue to be decided is as to whether any transfer of property is made during the pendency of proceedings, it is necessary to get prior permission from the Court for the said transfer of property or not.



10. On a reading of the judgments of the Hon'ble Supreme Court relied upon by the learned Senior Counsel for the revision petitioner, it is clear that the position of a person on whom any interest is devolved on account of the transfer during the pendency of a suit or a proceeding is somewhat similar to the position of a heir or a legatee of a party who dies during the pendency of a suit or a proceeding. Therefore, I do not find any impediment for the Court below to implead the revision petitioner as one of the appellants in A.S.No.32 of 2007.

11. Accordingly, the Civil Revision Petition is allowed and the order dated 02.02.2019 passed in I.A.No.1 of 2019 in A.S.No.32 of 2007 on the file of the Principal Subordinate Judge, Kumbakonam, is hereby set aside.

12. At this juncture, both the learned Senior Counsel appearing for the revision petitioner and the learned counsel appearing for the 6th respondent submitted that the appeal suit in A.S.No.32 of 2007 is pending before the Court below for the past 12 years.

13. In view of the above, this Court directs the learned Principal Subordinate Judge, Kumbakonam, to dispose of A.S.No.32 of 2007, after impleading the revision petitioner herein as 6th appellant, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal Subordinate Judge,
Kumbakonam.

+1 CC to Mr.V. PERUMAL, Advocate (SR-101841[F] dated 27/11/2019)

+1 CC to Mr.V.K.VIJAYA RAGAVAN, Advocate (SR-102854[F] dated 29/11/2019)

CRP(PD)(MD)No.1075 of 2019

27.11.2019

MK (07.01.2020) 5P 4C

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