



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.02.2019

CORAM
THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(MD)No.562 of 2013 (PD)
and
M.P. (MD) No.1 of 2013

1.R.Vasanth
2.J.Renganayagi
3.S.Saritha
4.R.Latha
5.S.Meena

: Petitioners/Petitioners/
Proposed Respondents 3 to 7

.. Vs ..

1.B.Chandra Devi : 1st Respondent/1st Respondent/Plaintiff
2.V.Velu @ Raja
3.Jailani : Respondents 2 & 3/ Respondents 2 & 3/
Defendants 1 and 2

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to reverse and set aside the fair order and decretal order in I.A.No.723 of 2012 in O.S.No.375 of 2007, dated 04.01.2013 on the file of the Principal District Munsif of Madurai Town.

For Petitioner : Mr.S.Ramesh
For Respondent 1 : Mr.P.T.S.Narendravasan
For Respondents 2 & 3 : No appearance

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ORDER

This Civil Revision Petition is directed against the impugned order passed by the learned Principal District Munsif, Madurai, in I.A.No.723 of 2012 in O.S.No.375 of 2007.

2.The first respondent in this Civil Revision Petition filed a suit in O.S.No.375 of 2007 on the file of the Principal District Munsif Court, Madurai, for declaration of her title and for consequential relief of recovery of possession and for mandatory injunction to remove the super structure which was constructed in the suit property and to hand over the possession of the suit property to the plaintiff. The suit is also for permanent injunction restraining the defendants from encroaching into the suit



property. The suit was filed on 09.04.2007. During the pendency of the suit, the revision petitioners have purchased the suit property from defendants 1 and 2 who are respondents 2 and 3 in this revision petition. It is also admitted that the suit property was purchased on 09.07.2007 during the pendency of the suit which is about three months after filing of the suit. Though the revision petitioners filed an application in I.A.No.723 of 2012 nearly after five years from the date of filing of the suit, to implead them as parties, in the affidavit filed in support of the petition, it is stated that the revision petitioners came to know about the suit only about a week before the application was filed and that they are necessary and proper parties for an effective and proper adjudication. The said application was dismissed by the lower Court on the ground that the revision petitioners are only purchasers *pendente lite* and that the transfer in favour of the revision petitioners is hit by the principle of *lis pendens*. The trial Court relied upon a decision of this Court reported in **2010 (2) CTC 636 (R.J.Paul v. S.N.Kulasekaran and two others)** wherein it has been held that any transfer during the pendency of the suit in the teeth of Section 52 of the Transfer of Properties Act, 1882, is hit by the principle of *lis pendens* and that the purchaser *pendente lite* is not a proper and necessary party to the Civil Miscellaneous Appeal in the said case. The trial Court also relied upon few other decisions which are mostly out of context. Merely because a transfer is hit by *lis pendens*, it cannot be understood that the transfer is void for all purposes. The object of Section 52 of the Transfer of Property Act is based on the doctrine of expediency. This section does not annul the alienation *pendente lite* but makes the alienation subservient to the rights of parties to the litigation.

3. Having regard to its object and principle, a purchaser *pendente lite* is also a necessary and proper party and entitled to be heard in the *lis* as his interest cannot be effectively represented or handled by the persons who have already sold the property to the *pendente lite* purchaser. The Hon'ble Supreme Court has interpreted the provision of Order XXII, Rule 10 of C.P.C. to enable the subsequent purchaser *pendente lite* to come on record and to defend or prosecute the suit as the case may be to protect their interest. This Court also find that the revision petitioners are necessary and proper parties and that in the interest of justice, they should be given an opportunity. Shutting out their right under the guise that the transfer in their favour is hit by the principle of *lis pendens* is against the principles of equity as they are bound by any judgment or order that may be passed in the suit or in the proceedings as the case may be. Hence, this Civil Revision Petition is allowed and the order passed by the learned Principal District Munsif, in I.A.No.723 of 2012 is set aside. The petition filed by the petitioners in I.A.No.723 of 2012 stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

4. The revision petitioners are directed to file their written statement within a period of three weeks from the date of receipt



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of a copy of this order. The trial Court is also directed to complete the trial and dispose of the suit on merits within a period of six months from the date of receipt of a copy of this order. No costs.

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Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif,
Madurai Town.

+1 CC to M/s.V.RAGHAVACHARI, Advocate in SR NO.48703

C.R.P(PD) (MD) No.562 of 2013
20.02.2019

srm

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