

**C.R.P.(PD).No.1462 of 2020**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 20.08.2020**

**CORAM:**

**THE HON'BLE MR.JUSTICE M.GOVINDARAJ**

**C.R.P.(PD).No1462 of 2020**

**&**

**C.M.P.No.8406 of 2020**

1.Sumathi

2.Mani

3.Ravi

4.Krishnan

... Petitioners

**Vs.**

1.Ramakrishnappa (died)

2.Venkatesh

3.Mardamma

4.Muniraj

5.Kempamma

6.Munilakshamma

1/6

7. Mukeh Kumar Sahani

... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 12.06.2020 made in I.A.No.1 of 2019 in A.S.No.6 of 2016 on the file of the Additional Sub Court, Hosur.

For Petitioners : Mr.N.Manokaran

**ORDER**

Inveighing the order dated 12.06.2020 of the Lower Appellate Court refusing to implead the *pendente lite* purchaser in appeal, the present Civil Revision has been preferred.

2. The petitioners filed a suit for declaration of title and injunction. The Trial Court dismissed the suit holding that the petitioners has failed to prove their title. Against which an appeal is pending before Additional Sub-Court Hosur. During the pendency of appeal respondents 2 to 6 sold the suit property to the proposed party. Therefore, the petitioners filed a petition to implead them as a party to avoid future litigations; which was refused by the Lower Appellate Court on the ground that the proposed party is not necessary

for the disposal of the appeal and that even without their presence complete decree can be passed.

3. The learned counsel for the petitioners relying on the judgment of Hon'ble Supreme Court in Thomson Press (India) Limited vs. Nanak Builders and Investors Private Limited and Others, 2013 (5) SCC 397 and the judgment of the Division Bench of this Court in V.L.Dhandapani vs. Revathy Ramachandran & Others, 2014 (3) L.W. 769 would contend that *pendite lite* purchaser shall be impleaded as a party and he should be heard.

4. The Lower Appellate Court ordered notice to the proposed party, but he not chosen to appear to contest the appeal and remained *ex-parte*.

5. In normal circumstances a purchaser of the property pending suit will file application to implead himself in the transferor may not diligently contest as he has no further interest in the property. In such cases depending on the facts and circumstances of the case, impleading may be allowed by the

Trial Court. But in the instant case, the Trial Court dismissed the suit of the petitioner filed for declaration and injunction. During the pendency of appeal the respondents 2 to 6 have alienated the property. It is well settled that transfer *pendente lite* is neither illegal nor void *ab initio* but remains sub-servient to rights eventually determined by Court in pending litigation. Here the sale was after the disposal of the suit and during the pendency of the appeal. The *pendente lite* purchaser in pending appeal is not going to improve the case by adducing additional materials, but the appeal would be decided on the basis of material evidence adduced before the Trial Court. When the purchaser himself has not taken any interest to put forth his arguments before the Appellate Court, the petitioners do not have more interest than him in this matter. As observed above, the purchaser's right is sub-servient to the rights to be determined. He cannot claim more rights than it is possessed by his vendor. The decision of the Appellate Court is binding on him as well. It is also well settled that even a third party and a party who remained *ex parte* are also entitled to file an appeal against the decree if he is directly prejudiced. Therefore, as observed by the Trial Court, the appeal can be decided even in

the absence of the proposed party and eventually it will bind on him. When the presence is not necessary for effective and complete adjudication, he need not be impleaded. The judgments relied on by the petitioners does not advance their case further.

In the factual circumstances, I do not find any legal infirmity in the order of the Lower Appellate Court warranting interference. Civil Revision petition is dismissed. No Costs. Connected miscellaneous petition is closed.

**20.08.2020**

Index : Yes/No  
Internet : Yes/No  
Speaking / Non-speaking order  
Tk  
To  
The Judge, Additional Sub Court, Hosur.

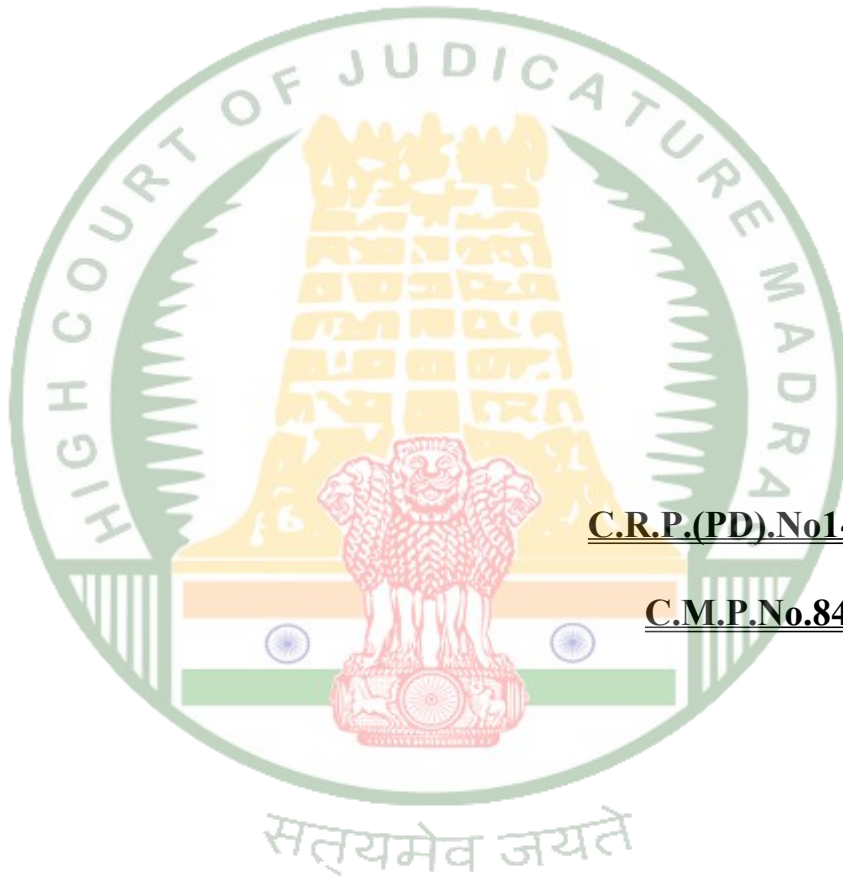
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**M.GOVINDARAJ, J.**

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