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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD).No.1688 of 2011 and

C.R.P. (PD) (MD)No.1140 of 2013 and

MP (MD)Nos.1 of 2011 and 1 of 2013

C.R.P. (MD)No.1688 of 2011

1.K.Devanand

2.K.Premanand

...Petitioners/7 & 8 Respondents/
4 & 5 Defendants

Vs.

1.Periasamy

... 1st Respondent/Petitioner/Proposed 12th
Defendant

2.Siva Vasuki

3.Vasumathi

4.Meenakshi

... Petitioner 2 to 4/Respondents 1 & 3/
Plaintiffs

5.Mahalakshmi

6.Valavanthan

7.Veeraperumal

... Respondents 5 to 7/Respondents 4 & 6/
Defendants 1 & 3

8.Seeli

9.Valavanthal

10.Sirumani Servai

11.Devaki

12.Subburaj

13.Ramasamy

...Respondents 8 to 13/Respondents 9 to 14/
Defendants 6 to 11

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Revision Petition thereby setting aside the order dated 31.03.2011 in I.A.No.107 of 2010 in O.S.No.9 of 2009 on the file of Principal District Judge, Virudhunagar District at Srivilliputhur.

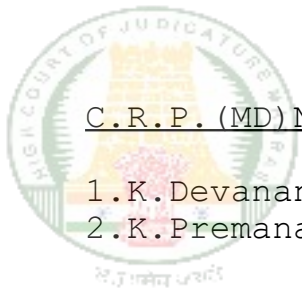
For Petitioner : Mr.S.Parthasarathy

For R1 : Mr.G.marimuthu

For R2 to R4 : Mr.J.Gunaseelan Muthaiah

For R8 to R10& R13 : Mr.V.Perumal

For R5, R6, R7, R11 : dispense with
and R12



C.R.P. (MD)No.1140 of 2013

1.K.Devanand
2.K.Premanand

...Petitioners/1&2 Respondents/Plaintiffs

Vs.

1.Periasamy ... 1st Respondent/Petitioner/Third Party

2.M/s.Q 425 Karuppatti
Manufacturers Co-op Society,
through its Special Officer.

3.Siva Vasuki

4.Vasumathi

5.Meenakshi ...Respondents 2 to 5/Respondents 3 to 6/
Defendants 2 to 5

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Revision Petition thereby setting aside the order in I.A.No.620 of 2010 in O.S.No.266 of 2003 on the file of the District Munsif, Aruppukottai dated 23.01.2013.

For Petitioner : Mr.S.Parthasarathy

For R1 : Mr.G.marimuthu

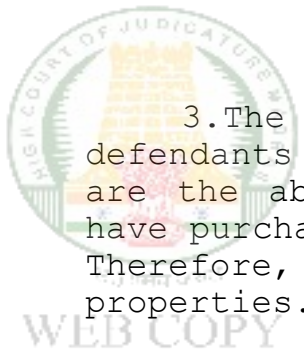
For R2 : Mr.M.Balamurugan

For R3 to R5 : Notice Exparte vide memo USR 1904

COMMON ORDER

While C.R.P.(MD)No.1688 of 2011 arose out of the petition for impleading in I.A.No.107 of 2010 filed in O.S.No.9 of 2009 on the file of the Principal District Judge, Virudhunagar at Srivilliputhur, C.R.P.(MD)No.1140 of 2013 arose out of a petition in I.A.No.620 of 2010 in O.S.No.266 of 2003 on the file of the District Munsif, Aruppukottai.

2.The suit in O.S.No.9 of 2009 was filed by three daughters of one Sivasubramaniya Muthaliyar, claiming that the suit properties numbering about 6 items belonged to the Sivasubramaniya Muthaliyar, as his ancestral properties and on his death on 04.01.2006, the plaintiffs being the daughters would be entitled to 1/6 share each as per the provisions of Section 29-A of the Hindu Succession (Amendment) Act, 1990. In the said suit, apart from adding their siblings as defendants 1 to 3, the plaintiffs also had impleaded defendants 4 to 11 who had purchased the properties from either Sivasubramaniya Muthaliyar or the defendants 2 and 3 who are the sons.



3.The suit is being resisted by the petitioners herein who are defendants 4 and 5, contending that the properties purchased by them are the absolute properties of Sivasubramaniya Muthaliar and they have purchased the said properties vide sale deeds dated 03.05.2003. Therefore, the plaintiffs cannot seek partition on the said properties.

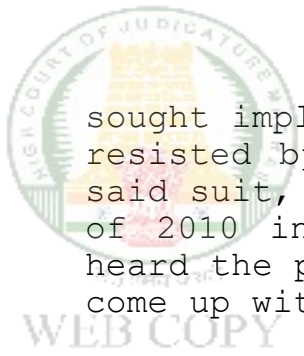
4.While the case stood thus, the first respondent herein filed an application in I.A.No.107 of 2010 claiming that he has purchased the suit second item under two sale deeds dated 17.04.2009 and 11.01.2010 from the plaintiffs. It is the further contention of the first respondent herein that the plaintiffs in the suit who were shown as respondents 2 to 4 in this revision petition, had suppressed the pendency of the suit and had sold the property for valuable consideration, as if it belongs absolutely to them. He would also claim that he is a bonafide purchaser.

5.This application was resisted by the petitioners herein contending that the first respondent being a lis pendens purchaser he is not entitled to be heard in the suit for partition. He is neither a necessary nor a proper party and in view of Section 52 of the Transfer of Property Act, the decision in the suit would binding on him and his purchase would be subject to the result of the litigation. Therefore, the petitioner in I.A.No.107 of 2010 namely the first respondent herein who is neither a proper nor a necessary party to the proceedings cannot seek impleadment as of right.

6.The Trial Court upon hearing the parties concluded that Section 52 of the Act does not invalidate a transfer of property that takes place pending the litigation. The effect of Section 52 of the Act, is only to make of alienations and transfers of immovable properties pending a litigation subject to the result of the litigation. To put it in otherwise, the effect of Section 52 of the Act is to make the judgement and decree in the suit binding on the pendente lite purchaser. The claim that the purchase was bonafide or not, is to be decided only at the time of trial. On the above conclusions, the learned Principal District Judge, Srivilliputhur, allowed the application for impleading.

7.Aggrieved defendants 3,4 and 5 in O.S.No.9 of 2009 have come up with this Civil Revision Petition in C.R.P.(MD)No.1688 of 2011. There is an another suit filed by the defendants 4 and 5 in O.S.No.266 of 2003 against the plaintiffs in O.S.No.9 of 2009 and the co-operative society seeking declaration of their title and permanent injunction on the strength of their purchase from Sivasubramaniya Muthaliyar. The plaintiffs in O.S.No.9 of 2009 sought impleading in the said suit and were impleaded as defendants 2 to 4.

8.Based on the very same sale deeds, dated 17.04.2009 and 11.01.2010, the first respondent in the said revision petition,



sought impleading in I.A.No.620 of 2010. The said petition was also resisted by the petitioners herein who were the plaintiffs in the said suit, on the very same contentions raised by them in I.A.No.107 of 2010 in O.S.No.9 of 2009. The District Munsif, Aruppukottai, heard the petition and allowed the same. Aggrieved petitioners have come up with this C.R.P.(MD)No.1140 of 2010.

9.The properties involved in both the suits are the same and the parties are also substantially same. I have heard Mr. Parthasarathy, learned counsel appearing for the petitioner and Mr.G.Marimuthu, for the first respondent, Mr.Gunaseelan for respondents 2 to 4, Mr.V.Perumal, learned counsel for the respondents 8 to 10 and 13. Notice to respondents 5,6,7, 11 and 12 has been dispensed with as they had remained ex parte before the Court below.

10.Mr.Parthasarathy, learned counsel for the petitioner, would vehemently contend that the Courts below are not right in allowing the applications for impleading on the ground that a lis pendens purchaser is not entitled to seek impleading as of right, in view of Section 52 of the Transfer of Property Act, which lays down that the decree passed in the suit will be binding on the subsequent purchaser. He would neither be a necessary nor a proper party to the suit. He would also invite my attention to the judgement of the Hon'ble Supreme Court in ***Vidur Impex and Traders Private Limited and other Vs. Tosh Apartments Private Limited and others*** reported in **(2012) 8 SCC 384**. The Hon'ble Supreme Court has held that a pendente lite purchase is not entitled to seek impleading in the suit as of right. The Hon'ble Supreme Court while setting out the parameters for impleading a person in the suit as observed as follows:

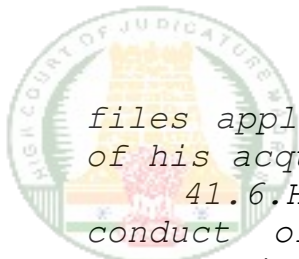
41.1.The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of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

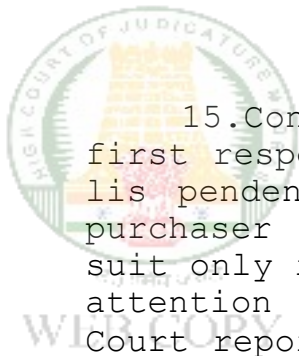
41.6.However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

11.After setting out the above guidelines on facts, the Hon'ble Supreme Court found that the application for impleading filed in the said proceedings was highly belated and the subsequent purchaser was also guilty of commissions and omissions therefore, he is not entitled to seek impleadment in the suit.

12.The next judgment relied upon by the learned counsel for the petitioner is the judgment of the Hon'ble Supreme Court in the decision reported in **(2006) 13 SCC 608, Sanjay Verma Vs Manik Roy and others**, wherein the Hon'ble Supreme Court had pointed out that a transferee pendente lite is bound by the decree just as much as he was the party to the suit and the principle of lis pendens embodied in Section 52 of the Transfer of Property Act being a principle of public policy, no question of good faith or bonafide arises. After concluding so, the Hon'ble Supreme Court had observed that a pendente lite purchaser cannot seek impleading as of right and the question of impleading the pendente lite purchaser would very much depend on the facts and circumstances of each case.

13.Mr.Parthasarathy, learned counsel for the petitioner would also invite my attention to another judgement of the Hon'ble Supreme Court in the case of **Kirpal Kaur Vs Jitender Pal Singh and others** reported in **(2015) 9 SCC 356** wherein again the question of transfer during pendency of litigation was considered in a totally different context as to whether the property was sold after the dismissal of the appeal by the High Court within a limitation period for filing a Special Leave Petition. But the donee in that case who got the property by way of gift, approached the Hon'ble Supreme Court belatedly and therefore, the Supreme Court dismissed the impleading application.

14.Reliance is also placed in the case of **K.N.Aswathnarayana Setty(Dr)Tr.LRS and others Vs. State of Karnataka and others** reported in **AIR 2014 Supreme Court 279** wherein again the Hon'ble Supreme Court has pointed out that the lis pendens purchaser cannot deprive the successful plaintiff of the fruits of the decree if he had purchased the property pendente lite. The question of impleading of lis pendens purchaser was not considered in the said decision.

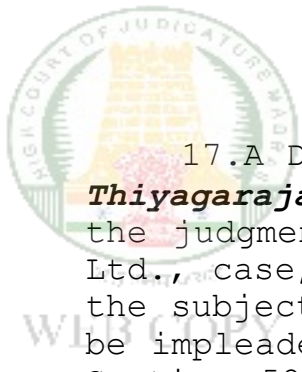


15. Contending contra, Mr. G. Marimuthu, learned counsel for the first respondent would submit that the law relating to impleading a lis pendens purchaser in a suit is well settled. A lis pendens purchaser though not a necessary party, he can be impleaded in the suit only in order to protect his interest. He would also invite my attention to the judgement of a Three Bench of the Hon'ble Supreme Court reported in **AIR 1999 Supreme Court 976** in the case of **Savitri Devi Vs District Judge, Gorakhpur and others**. While considering the scope of Order 1 Rule 10 and the power of Court to implead purchasers pendent lite, the Hon'ble Justice M. Srinivasan who authored the judgment observed as follows:

"8. The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was party to the order of injunction made by the Court on 18.08.192. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the Court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the Court. The plea raised by the respondents 3 to 5 that they were bonafide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the Court either in the suit or in the application filed by respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions, respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means multiplicity of proceedings. In such circumstances, it cannot be said that respondents 3 to 5 are neither necessary nor proper party to the suit.

9. Order I, Rule 10, C.P.C enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the 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 in the Code."

16. After referring to various previous decisions of the Hon'ble Supreme Court, it was finally concluded that the Court is not powerless or barred from impleading a lis pendens purchaser. A lis pendens purchaser can be made a party to the suit, only to protect his rights and to prevent multiplicity of litigation. This view of the three Judges Bench was followed in **Thomson Press (India) Ltd Vs Nanak Builders & Investors P.Ltd and others** reported in **2013 (2) CTC 104** in a suit for specific performance, it was held that a lis pendens purchaser can be made as a party.

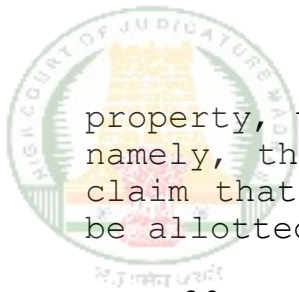


17.A Division Bench of this Hon'ble Court in the case of **Devaki Thiagarajan Vs Ahamed** reported in **2015 (4) CTC 293** while following the judgment of the Hon'ble Supreme Court in Thomson Press (India) Ltd., case, referred supra, held that a party who gains interest in the subject matter of suit would become an interested party and can be impleaded under Order 1 Rule 10. While ruling on the scope of Section 52 of the Transfer of Property Act, the Hon'ble Division Bench clearly observed as follows:

"In so far as the present Appeal is concerned, we would like to place it on record that the Principle of lis pendens embodied in Section 52 of the T.P.Act being a Principle of Public Policy, no question of good faith or bonafide arises. The principle underlying section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. The mere pendency of a Suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any Decree, which may be passed in the suit unless the property was alienated with the permission of the Court."

18.A perusal of the above judgements cited on either side would clearly pointed out that impleading of a pendente lite purchaser is not prohibited either by Section 52 of the Transfer of Property Act and under Order 1 Rule 10 of the Civil proceedings. Order 1 Rule 10 is essentially allow the Court to implead any person who may have an interest in the subject matter of the suit in order to conduct an effective litigation. Moving a step ahead, it is not uncommon today to see parties to a litigation transfer their interest to third party for consideration and step away from the litigation thereby jeo pardising the purchaser's interest also. Ofcourse, the remedy by way of a suit is always available. The attempt of the Court while dealing with an application under Order 1 Rule 10 of C.P.C., filed by a pendente lite purchaser is to examine whether knowledge of the proceedings could be imputed to the purchasers. If the answer is negative then as a rule, a pendente lite purchaser must be made as a party to the litigation, so that he can atleast protect his interest from being defeated by the actions of his vendors.

19.Though, Mr.Parthasarathy, the learned counsel for the petitioner would vehemently contend that his interest would be prejudiced by such impleading. I am unable to accept the said submission. It is the case of the defendants 4 and 5 in the suit in O.S.No.9 of 2009 that the property purchased by them from Sivasubramaniya Mudaliyar absolutely belongs to him and he had every right to alienate the same. If his defence is upheld then the plaintiffs as well the purchasers from them, cannot claim any right over the property. In the event, the plaintiff have a share in the



property, then it will be always open to the pendente lite purchaser namely, the first respondent in these Civil Revision Petitions, to claim that the properties that has been sold by his vendors should be allotted to him to the extent possible.

20.I do not think that it would be fair on Courts to deny such an opportunity to the purchasers on the ground that their purchase is pending the lis. As regards, the other suit namely suit in O.S.No.266 of 2003, the suit is for declaration of title by the plaintiff based on the sale deeds executed by Sivasubramaniya Mudaliyar. It is the said power of sale of Sivasubramaniya Mudaliyar which is in question in O.S.No.9 of 2009. The respondents 2 to 4 herein, who are the plaintiffs in O.S.No.9 of 2009, had admittedly alienated the properties in favour of the first respondent and on the strength of the said purchase, the first respondent sought impleading. In a suit for declaration of title and injunction, it cannot be said that the first respondent who is a pendente lite purchaser, is absolutely a unnecessary party to the suit. Adding him as a defendant would in no way affect the rights of the plaintiff under the sale deed executed in their favour by Sivasubramaniya Mudaliyar as far back in the year 2003.

21.I am, therefore, of the considered opinion that the Courts below cannot be faulted for allowing the applications for impleading. I see no error of jurisdiction in the orders of the Courts below. Hence, both the revision petitions are dismissed. However, there will be no order of costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Pnn

To

1. The Principal District Judge,
Virudhunagar.

2.The District Munsif, Aruppukottai.

+1CC to MR.S.PARTHASARATHY, Advocate (SR-8609[F]dated 27/02/2020)



C.R.P.(MD).No.1688 of 2011 and C.R.P.(MD)No.1140 of 20173

+1CC to MR.J.GUNASEELAN MUTHIAH, Advocate (SR-8597[F] dated 26/02/2020

+2 CC to M/s.G.M.LAW ASSOCIATES, Advocate (SR-8613,8614[F] dated 27/02/2020)

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+1 CC to Mr.V.PERUMAL, Advocate (SR-8864[F] dated 27/02/2020)

C.R.P. (PD) (MD) .No.1688 of 2011 and
C.R.P. (PD) (MD)No.1140 of 2013
26.02.2020

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