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C.M.P.(MD).No.4073 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2020

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) .Nos.629 and 630 of 2020

and

C.M.P. (MD) .No.4073 of 2020

in

C.R.P (MD) .No.629 of 2020

Purushothaman

... Petitioner/2nd Respondent/Appellant
/ Respondent in both C.R.Ps

Vs

1. S.Bensam, S/o. Late.Suvakkeen, Door No.4/148,
Nachithundathuvilai, Nellirakonam, Neyoor Post, Eraniel Village,
Kalkulam Taluk, Kanyakumari District rep by his power of Attorney
Holder K.Lakshmananan Pillai

...Respondent/Petitioner/
Proposed Additional 2nd Appellant
in both CRPs

2.Christopher Jenkins

2.Nageswari

... Respondents/Respondents/
Respondents/Defendants
in both C.R.Ps

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order as made in I.A.Nos.1 and 2 of 2019 in A.S.No.60 of 2016 on the file of the Additional District and Sessions Judge, Padmanabhapuram, Kanyakumari District, dated 15.10.2019 in O.S.No.96 of 2012 on the file of the Sub-ordinate Judge, Padmanabhapuram, Kanyakumari District forthwith.

For Petitioner

: Mr.S.Palalni Velayutham

COMMON ORDER

The revision petitioner is the respondent in the appeal suit in A.S.No.60 of 2016, which is pending on the file of the Additional District and Sessions Court, Padmanabhapuram, Kanyakumari District.

2.The second respondent in this civil revision petition filed the suit in O.S.No.96 of 2012, on the file of the Sub Court, Padmanabhapuram, for recovery of possession of the suit property,

<https://hcservices.ecourt.gov.in/hcservices/>



after vacating the defendants in the suit and the suit is also for recovery of a sum of Rs.3,850/- towards arrears of rent and for permanent injunction restraining the defendants from altering the physical features of the suit property. It is admitted that the suit was dismissed by the trial Court. Against which, an appeal is preferred by the plaintiff in the suit, in A.S.No.60 of 2016, on the file of the Additional District and Sessions Court, Padmanabhapuram. During the pendency of the appeal suit, the first respondent, claiming to be the purchaser of the property from the second respondent viz., the plaintiff in the suit, filed a petition in I.A.No.1 of 2019 seeking permission to his power of attorney agent to appear, give evidence and to conduct the case on behalf of the second appellant in the first appeal. The first respondent filed another application in I.A.No.2 of 2019 to implead him as the second appellant in the appeal suit. Both the applications were allowed by the trial Court holding that the purchaser is a necessary and proper party to prosecute the appeal suit. Aggrieved by the same, the present Civil Revision Petitions have been filed by the defendants in the suit.

3.The learned counsel appearing for the revision petitioner submitted that the lower appellate Court has failed to see that the newly proposed party is a purchaser *Pendente lite* and that therefore, the transfer in favour of the second appellant is hit by Section 52 of the Transfer of Property Act. The learned counsel further submitted that as power of attorney agent, he can only conduct the case on behalf of his principal but, cannot give evidence, as it is unauthorized even as per the power of attorney document. He added further that a power agent cannot give evidence on behalf of his principal.

4.Even the purchaser *Pendente lite* is entitled to implead himself and come on record to contest the case to protect his interest. Order 22 Rule 10 of C.P.C, enables the purchaser *Pendente lite* to implead himself in the proceedings and to prosecute or defend the suit, since he cannot independently question the validity of the judgment and decree later. It is to be noted that the only remedy available to the purchaser *pendente lite* is to conduct the case by getting himself impleaded in the proceedings. While that being the prayer sought for by the first respondent, the Court is expected to allow such application and not to dismiss it on the ground that the alienation in favour of the first respondent is hit by *lis pendens*. With the leave of Court any party can conduct the case through his power agent.

5.This Court, having regard to the reasons stated above finds no error or irregularity in the order passed by the lower Court.



Hence, these Civil Revision Petitions are dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purpose, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional District and Sessions Judge,
Padmanabhapuram,
Kanyakumari District.

2. The Sub-ordinate Judge,
Padmanabhapuram,
Kanyakumari District.

C.R.P. (MD) .Nos. 629 and 630 of 2020

and

C.M.P. (MD) .No. 4073 of 2020

in

C.R.P (MD) .No. 629 of 2020

09.09.2020

SCR (CO)

KM (24.09.2020) 3P 3C