

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.1446 of 2015
and M.P.No.1 of 2015

G.Rajakumari ... Petitioner

Vs.

1. Ganesan
2. Rajamanickam ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the impugned order dated 27.01.2015 made in I.A.No.218 of 2014 in O.S.No.332 of 2004 by the learned Additional Sub Judge at Puducherry.

For Petitioner : Dr.C.Ravichandran

For Respondents

For R1 : Mr.T.M.Naveen

For R2 : Mr.S.Ruban Prabu

ORDER

This revision petition is directed as against the fair and decreetal order dated 27.01.2015 passed by the learned Additional Sub Judge at Puducherry in I.A.No.218 of 2014 in O.S.No.332 of 2004, thereby

allowing the application filed by the plaintiff/first respondent to strike out the defense of the second defendant/petitioner herein.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the second defendant in the suit filed by the first respondent herein. He would further submit that originally the first respondent filed suit for specific performance as against the second respondent herein. The petitioner is the bonafide purchaser of the suit property for valid sale consideration by a registered sale deed dated 03.08.2007 from the second respondent. In fact, the original documents are also handed over to the petitioner by her vendor viz., the second respondent herein. The petitioner was impleaded as second defendant by virtue of order dated 13.06.2011 passed in I.A.No.359 of 2009 in O.S.No.332 of 2004. Thereafter she also filed written statement in that suit.

2.1. While being so, the first respondent herein filed petition to strike out the defense taken by the petitioner herein on the ground that the petitioner has no right to lead evidence. He further submitted that the

petitioner being a transferee pendente lite of the suit property, she has right to defend the suit. To support of his arguments, the learned counsel appearing for the petitioner relied upon the following judgments:-

(i) (2000)2 SCC 428 - Ramawadh (died) by LRs and ors Vs. Achhaibar Dubey and anr

(ii) (2005) 11 SCC 403 - Amit Kumar Shaw and anr Vs. Farida Khatoon and anr.

(iii) (2013) 5 SCC 397 - Thomson Press (India) Ltd, Vs. Nanak Builders and investors Pvt. Ltd., and ors.

3. Per contra the learned counsel appearing for the first respondent submitted that the petitioner was implicated as second defendant in the suit for the reason that the petitioner purchased the suit property on 03.08.2007, while pending the suit. Already the second respondent herein had cross examined the first respondent and thereafter, the petitioner herein claims right to cross examine the first respondent herein. The petitioner being a transferee pendente lite of the suit property, she has no independent right to defend the suit as she has only stepped into the shoes of the second respondent herein. Therefore, she has no right of audience in the suit except to sit along with the second respondent and watch the proceedings. He also

relied upon the judgment reported in **(2013) 5 SCC 397** in the case of **Thomson Press (India) Ltd, Vs. Nanak Builders and investors Pvt. Ltd., and ors** in which the Hon'ble Supreme Court of India settled the provision of law in respect of transferee pendente lite and it is held that the petitioner shall as a result of his addition raise and pursue only such defences as were available and taken by the original defendants and none other.

4. Heard Mr.C.Ravichandran, learned counsel appearing for the petitioner Mr.T.M.Naveen, learned counsel appearing for the first respondent and Mr.S.Ruban Prabu, learned counsel appearing for the second respondent.

5. The first respondent herein filed suit for specific performance, on the strength of agreement for sale dated 29.06.2003 as against the second respondent herein. While pending the suit, the petitioner herein purchased the entire suit property vide registered sale deed dated 03.08.2007, for the valid sale consideration. Therefore, the petitioner herein filed application to implead herself as party to the suit since she purchased the entire suit

property for the valid sale consideration by the registered sale deed dated 03.08.2007. The said application was allowed and she also filed her written statement on 14.06.2012.

6. At that juncture, the first respondent filed petition in I.A.No.218 of 2014 to strike out the defense taken by the petitioner herein. The trial Court allowed the petition and strike out the defense raised by the petitioner herein for the reason that the petitioner being the transferee pendente lite, has no independent right to defend the suit as she has only stepped into the shoes of the first respondent herein and she has no right of audience in the suit except to sit along with the second respondent herein and she has no locus-standi to lead evidence.

7. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **(2000)2 SCC 428** in the case of ***Ramawadh (died) by LRs and ors Vs.Achhaibar Dubey and anr***, which reads as follows :-

"6. The obligation imposed by Section 16 is

upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that he mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case [(1995) 2 SCC 31] is erroneous."

8. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in (2005) 11 SCC 403 in the case of **Amit Kumar Shaw and anr Vs. Farida Khatoon and anr.**, as follows :-

"16. The doctrine of lis pendens applies

only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired

that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

9. He also relied upon yet another judgment reported in **(2013) 5 SCC 397** in the case of **Thomson Press (India) Ltd, Vs. Nanak Builders and investors Pvt. Ltd., and ors.**, in which our Hon'ble Supreme Court of India held as follows :-

"45. Before parting with the order, it is clarified that the appellant after impleadment as party-defendant shall be permitted to take all such defences which are available to the vendor Sawhneys as the appellant derived title, if any, from the vendor on the basis of purchase of the suit property subsequent to the agreement with the plaintiff and during the pendency of the suit.

49. The second aspect which the proposed judgment succinctly deals with is the effect of a sale pendente lite. The legal position in this

regard is also fairly well settled. A transfer pendente lite is not illegal ipso jure but remains subservient to the pending litigation. In Nagubai Ammal v. B. Shama Rao [AIR 1956 SC 593] this Court while interpreting Section 52 of the Transfer of Property Act observed: (AIR p. 602, para 25)

“25. ... the words ‘so as to affect the rights of any other party thereto under any decree or order which may be made therein’, make it clear that the transfer is good except to the extent that it might conflict with rights decreed under the decree or order. It is in this view that transfers pendente lite have been held to be valid and operative as between the parties thereto.””

In all the above cases our Hon'ble Supreme Court of India held that the transferee pendente lite is not illegal *ipso jure* but remains subservient to the pending litigation. Therefore, the transferee pendente lite is entitled to heard in the matter on the merits of the case.

WEB COPY

10. In the case on hand, admittedly, the petitioner herein purchased

the entire suit property by the registered sale deed dated 03.08.2007. Therefore, the petitioner is entitled to be added as a party to defend the suit and she has locus-standi to defend the suit. It is made clear that the petitioner shall as a result of his addition raise and pursue only such defences as were available and taken by the second respondent herein and none other, as pointed out by the Hon'ble Supreme Court of India.

11. In view of the above discussions, the order passed by the trial Court is perverse and illegal. Accordingly, the order dated 27.01.2015 passed by the learned Additional Sub Judge at Puducherry in I.A.No.218 of 2014 in O.S.No.332 of 2004 is hereby set aside and the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

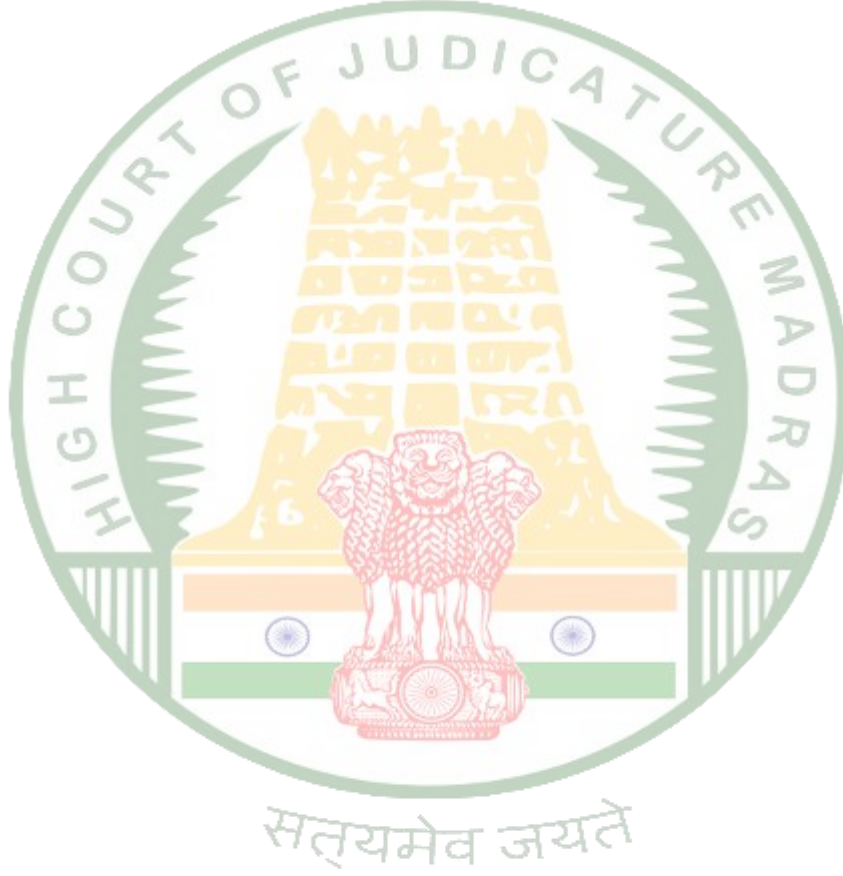
11.01.2021

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

To

Page 10 of 12

1. The Additional Sub Judge
Puducherry.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

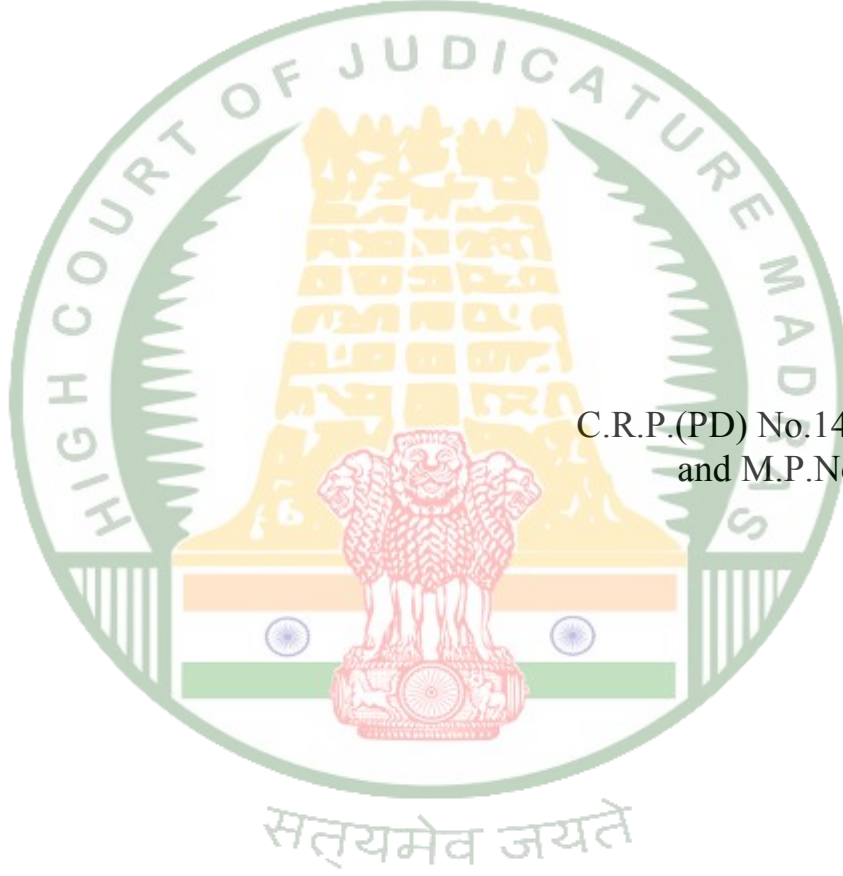


WEB COPY

C.R.P.(PD)No.1446 of 2015

G.K.ILANTHIRAIYAN, J.

rts



C.R.P.(PD) No.1446 of 2015
and M.P.No.1 of 2015

WEB COPY

11.01.2021