

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

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

CRP.PD.No.2317 of 2015 and  
MP.No.1 of 2015

P.Pandian

..Petitioner

Vs.

1.Venkatachalapathy  
2.Shanmugam  
3.Ganapathy  
4.Vijayachandran  
5.Subramanian

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying against the fair and decretal order dated 03.02.2015 made in IA.No.3741 of 2014 in OS.No.516 of 2010 on the file of the I Additional District Munsif Court, Kallakurichi.

For Petitioner : Mr.C.E.Pratap

For Respondents

For R4 : Mr.C.Prabakaran

For R5 : Mr.P.Valliappan

R1 to 3 : No Appearance

**ORDER**

This civil revision petition is arising out of fair and decretal order dated 03.02.2015 made in IA.No.3741 of 2014 in OS.No.516 of 2010 on the file of the I Additional District Munsif Court, Kallakurichi.

2. The respondents 1 to 3 filed suit for declaration and injunction as against the respondents 4 and 5 herein in respect of the suit schedule property. Before filing the suit, the plaintiffs executed power of attorney in favour of one Asokan. In turn, the said Asokan on the strength of power of attorney executed sale deed in respect of part of suit schedule property in favour of the petitioner herein. Therefore, the petitioner filed petition to implead as one of the plaintiffs in the main suit.

3. The learned counsel for the petitioner would submit that the petitioner purchased the suit property from the power holder of the plaintiffs in respect of second item of the suit property and as such he necessarily to be impleaded as one of the plaintiffs to contest the suit. In support of his contention he relied upon the judgments in the case of **Thomson Press(India) Ltd Vs. Nanak Builders & Investors P.Ltd & others** reported in **2013 (2) CTC 104** and in the case of **V.L.Dhandapani and others Vs. Revathy Ramachandran and others** reported in **2014 (4) CTC 814**.

4. Per contra, the learned counsel for the respondents 4 & 5 submitted that the petitioner has purchased part of the property in the suit

schedule property. The petition itself was filed with collusion of the plaintiffs. The plaintiffs filed suit in respect of the suit schedule property for declaration and injunction. Pending the suit, their power agent executed sale deed in favour of the petitioner herein with the knowledge of the plaintiffs. Therefore, the plaintiffs will take care of the entire suit property and need not implead the petitioner as one of the plaintiffs. Originally the suit property was owned by the plaintiffs. There cannot be two sets of plaintiffs to proceed with the case. Considering the above facts and circumstances of the case, the trial court rightly rejected the petition filed by the petitioner herein.

5. Heard Mr.C.E.Pratap, the learned counsel for the petitioner and Mr.C.Prabakaran, the learned counsel for the fourth respondent and Mr.P.Valliappan, the learned counsel for the fifth respondent. Though notice was served to the respondents 1 to 3, on one appeared on behalf of them before this Court in person or through pleader.

6. The petitioner is the proposed plaintiff, who filed petition to implead himself as fourth plaintiff in the suit. The respondents 1 to 3 filed suit for declaration and injunction in respect of the suit schedule property. Pending the suit, the power agent of the respondents 1 to 3 herein executed sale deed insofar as the second item of the property in favour of the

petitioner herein by the registered sale deed. Admittedly, the petitioner purchased the property during pendency of the suit and he is a *pendente lite*.

It is relevant to extract Section 52 of Transfer of Property Act as follows:

*“During the pendency in any court... of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose”*

7. That apart, the petitioner admittedly purchased the part of the suit schedule property and in the case relied upon by the learned counsel for the petitioner in the case of **Thomson Press(India) Ltd Vs. Nanak Builders & Investors P.Ltd & others** reported in **2013 (2) CTC 104**, the Hon'ble Supreme Court of India has held as follows:

56. To sum up:

1) The appellant is not a bona fide purchaser and is, therefore, not protected against specific performance of the contract between the plaintiffs and the owner defendants in the suit.

(2) The transfer in favour of the appellant pendente lite is effective in transferring title to the appellant but such title shall remain subservient to the rights of the plaintiff in the suit and

subject to any direction which the Court may eventually pass therein.

(3) Since the appellant has purchased the entire estate that forms the subject matter of the suit, the appellant is entitled to be added as a party defendant to the suit.

(4) The appellant shall as a result of his addition raise and pursue only such defenses as were available and taken by the original defendants and none other.

With the above additions, I agree with the order proposed by my Esteemed Brother, M.Y. Eqbal, J. that this appeal be allowed and the appellant added as party defendant to the suit in question.

The Hon'ble Supreme Court of India had categorically held that when the person purchased the entire suit property, he is entitled to be added as party defendant to the suit. In the case on hand, the petitioner admittedly purchased part of the suit property. That apart, the petitioner did not purchase any property from the defendants. Instead he purchased property from the plaintiffs. Therefore, there cannot be two sets of plaintiffs to try the case. As such the trial court rightly dismissed the petition filed by the petitioner herein, and this Court finds no irregularity or infirmity in the order passed by the court below.

8. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

06.01.2021

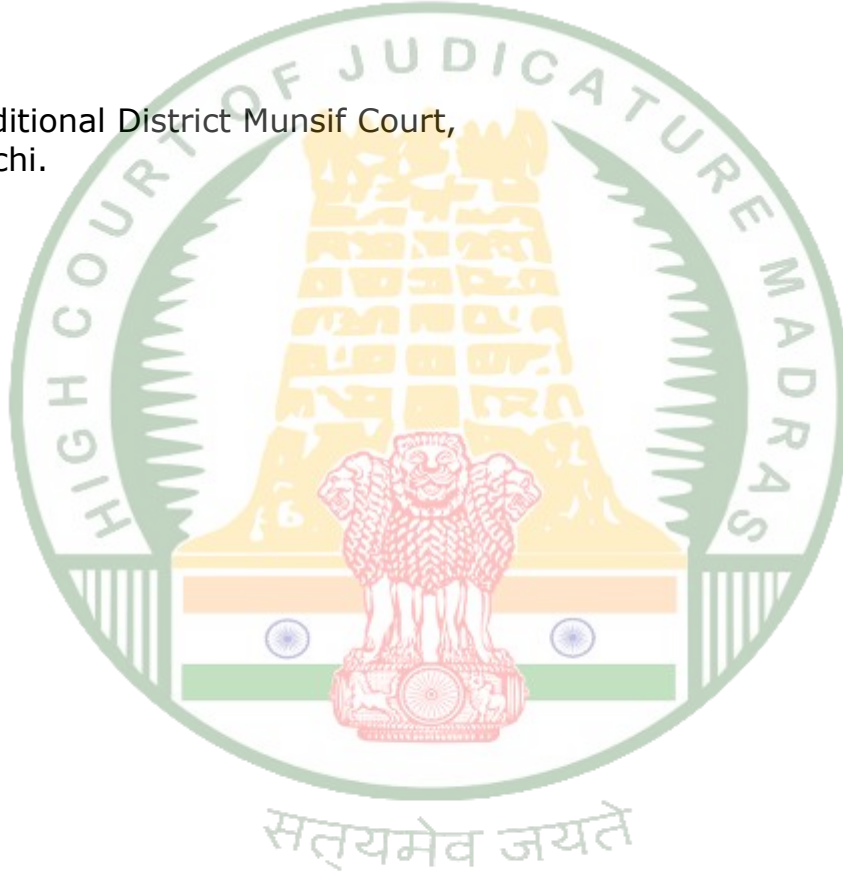
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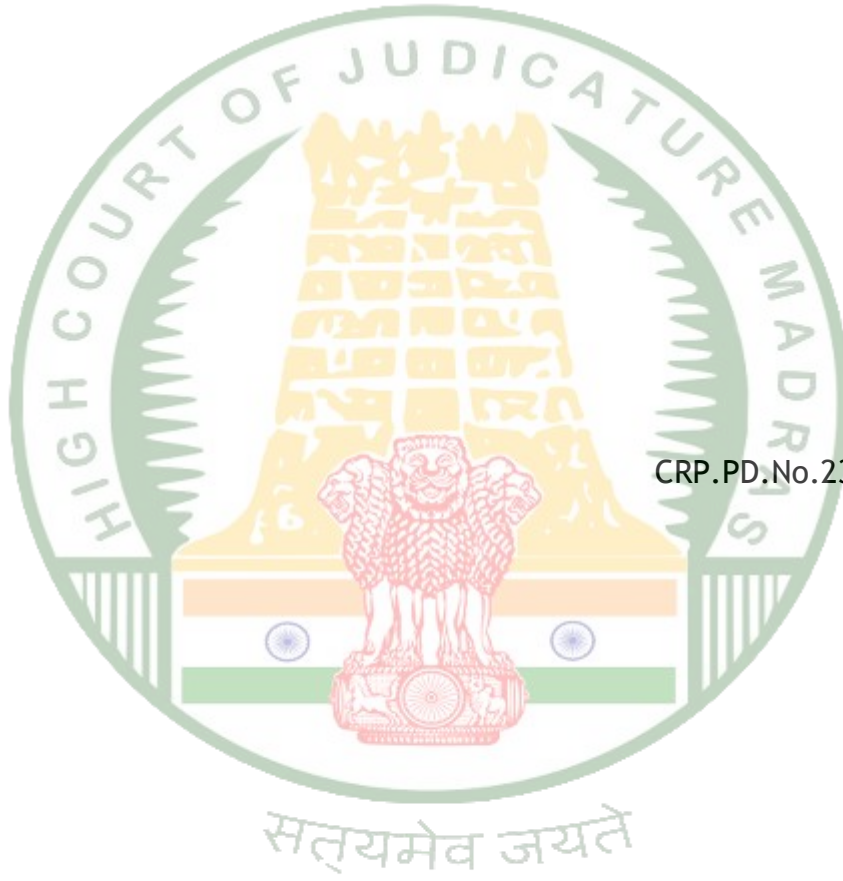
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**G.K.ILANTHIRAIYAN,J.**

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