

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.02.2021

Pronounced on : 03.2021

CORAM

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

CRP.PD.Nos.3824 & 3825 of 2015 and
MP.Nos.1 & 1 of 2015

CRP.PD.No.3824 of 2015

1.M.S.Kandhiah
2.C.P.Shamsudheen

..Petitioners

Vs.

1.M.A.Ahamed Thahir
2.Aysha Rahim
3.M.A.Mohammed Ashraff
4.M.A.Mohammed Raffic
5.Abitha
6.Suseetha
7.Badrinisha
8.M.M.Abdul Basith
9.M.M.Mohammed Asiq
10.M.M.Kaledurahman
11.Zunaidha
12.Hameed
13.Bellia
14.Sarla
15.Vasantha
Mani M.E.Abdul Rahman(died)
16.Subaida Beevi
17.Shaukath Ali
18.Mehrunnisa
Abdul Hedi(died)
19.Mohammed Sarker

20.Habibunnnisa
21.Ummusalma
22.Sabeer
23.Sadiq
24.Basheer
25.Zubair
26.Rahmathulla
27.Abitha Begam
28.Basima Begam
29.Nazeema Begam
30.Mohamed Ibrahim

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 22.07.2015 made in IA.No.210 of 2014 in OS.No.283 of 2002 on the file of the Court of the Subordinate Judge, Ooty.

For Petitioners : Mr.T.P.Manokaran,
Senior Counsel
for Mr.K.P.Jootheeswaran

For Respondents
R3 to 11 : Mr.K.V.Babu

R1,2,12 to 30 : No appearance

CRP.PD.No.3825 of 2015

1.M.S.Kandhiah
2.C.P.Shamsudheen

..Petitioners

Vs.

1.Subaida Beevi

2. Shaukath Ali
 3. Mehrunnisa
 4. Abdul Hedi (died)
 5. Mohammed Sarker
 6. Habibunnisa
 7. The Assistant Settlement Officer,
Dharapuram
 8. The State,
Rep. by the Collector of Nilgiris,
Udhagamandalam, The Nilgiris
 9. M.A. Ahmed Tahir (died)
 10. K.M. Badrunnisa
 11. Mohamed Aashif
 12. Zunaidha
 13. Kalilu Rahman
 14. Mohamed Bashik
 15. Ayesha
 16. Mohamed Ashraf
 17. Abitha Begam
 18. Subetha Begam
 19. Mohamed Rafiq
 20. M.E. Mohamed Zachariah (died)
 21. Safoora Beebi
 22. Abdul Ameer
 23. Janna Amma
 24. Thaiba
 25. Mani M.E. Abdul Rahman (died)
- ..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 22.07.2015 made in IA.No.211 of 2014 in OS.No.107 of 2009 on the file of the Court of the Subordinate Judge, Ooty.

For Petitioners : Mr.T.P.Manoharan

Senior Counsel
for Mr.K.P.Jootheeswaran

For Respondents
R10to14,16to19 : Mr.K.V.Babu
For R8 : Mr.S.Jaganathan,
Government Advocate(CS)
For 1 to 7,9, 15,
20 to 25 : No appearance

COMMON ORDER

The civil revision petitions are filed against the order dated 22.07.2015 made in IA.No.210 of 2014 in OS.No.283 of 2002 on the file of the Court of the Subordinate Judge, Ooty and the order dated 22.07.2015 made in IA.No.211 of 2014 in OS.No.107 of 2009 on the file of the Court of the Subordinate Judge, Ooty.

2. In both the civil revision petitions, the petitioners are the proposed defendants in the suit filed by the respondents 1 to 6 / defendants in OS.No.107 of 2009 and the respondents 1 to 11 / defendants in OS.Nos.283 of 2002. They filed the petition to implead them as defendants in both the suits. Both the applications were dismissed. Aggrieved by the same, the present civil revision petitions are filed.

3. Mr.T.P.Manoharan, the learned Senior Counsel appearing for the petitioners submitted that the suit property originally belong to Nilambur Kovilagam. One, Abdul Razak Sahib became the lessee of the suit schedule property. The said lease was governed by the Malabar Tenancy Act, 1929. Accordingly, the said leasehold right was heritable and also alienable. Some of the defendants' father one Mr.Mani Mohamed Ibrahim purchased the lease hold right of the suit property from the said Abdul Razak Sahib by the registered sale deed vide document No.4 of 1935. After his demise, his legal heirs are continued to be in possession of the suit schedule property. While being so, the plaintiffs' fathers fraudulently created two deeds as if they purchased the leasehold right in respect of the suit schedule property from the legal heirs of the said Mani Mohamed Ibrahim. In pursuant to the same, they also obtained patta suppressed the fact that under the Gudalur Janmam Estates (Abolition and Conversion into Riotwari) Act 1969. However the same was set aside by the revision filed by the defendants before the settlement Officer in RP.No.9 of 1980. Thereafter, the plaintiffs preferred appeal and revision and finally came before this Court in WP.No.17503 of 1992 along with the fifth defendant. In fact, the fifth defendant also filed separate civil suit in OS.No.201 of

1989 in respect of the portion of the suit schedule property for damages. This Court dismissed the writ petition and permitted the plaintiff and the fifth defendant to work out their remedy before the civil court in OS.No.201 of 1989. Further permitted the plaintiff as well as defendants 5 to 11 to work out their rights in a comprehensive suit for the possession and the patta in respect of the suit schedule properties by impleading the competent authority. Hence, they filed comprehensive suit in OS.No.107 of 2009 for declaration as they are entitled to patta and for vacant possession.

3.1 He further submitted that since the defendants are very poor and offered to sell their entire right in respect of the suit schedule property, the petitioners agreed to purchase the portion of the suit property and entered into sale agreement. They also received entire sale consideration and executed two sale deeds dated 22.12.2008 in favour of the petitioners herein. Both the sale deeds were presented for registration before the Sub Registrar, Gudalur and refused to register the same for the reason citing the Government Order and returned the sale deed. However, the possession of the suit property handed over to the petitioners and they are in possession and enjoyment of the portion of the suit properties. Since

no patta issued in favour of the defendants, namely vendors of the petitioners, they cannot file suit for specific performance and it can be filed only after obtaining patta in favour of their vendors. Therefore, the petitioners have interest over the portion of the suit schedule property and they want to be impleaded as proposed defendants. The defendants in OS.No.107 of 2009 filed suit in OS.No.283 of 2002. The defendants in O.S.No.283 of 2002 filed suit in OS.No.107 of 2009 and they are about to withdraw the suit colluding with other parties. Therefore, to protect the petitioners' interest they want to implead themselves as party in the suit. In support of his contention, he relied upon the following judgments:

- (i) Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar & Others
reported in (2018) 7 SCC 639
- (ii) D.Devarajan Vs. Alphonsa Mary & others
reported in 2019 (2) CTC 290
- (iii) G.Veeramani Vs. N.Soundaramoorthy & Others
reported in 2019 (6) CTC 580
- (iv) Thomson Press (India) Ltd Vs. Nanak Builders & Investors
Pvt. Ltd & Others reported in (2013) 5 SCC 397

4. Per contra, the learned counsel for the respondents submitted that the suit in OS.No.107 of 2009 was already withdrawn by the plaintiffs namely the respondents 1 to 6 in CRP.No.3825 of 2015 and as such nothing survives in the civil revision petition in CRP.No.3825 of 2015 and become infructuous. Insofar as OS.No.283 of 2002, in which the suit filed by the respondents 1 to 11, transferred to the file of the Sub Court, Gudalur and renumbered as OS.No.1120 of 2007 and it is pending for examination of witnesses. He further submitted that admittedly proposed defendants are neither owner nor agreement holder of the suit schedule property. They have absolutely no right over the suit schedule property and they have no locus to implead as party to the suit proceedings. According to their case, they purchased portion of the suit property and presented their sale deed and the same were returned. Therefore, no sale deed was registered in their favour. Even according to them, the vendors are very much parties to the suit and they are contesting the suit. Therefore, the interest of the suit property will be taken care of by their proposed vendors and the petitioners are unnecessary parties to the suit. In this regard, he relied upon the judgment in the case of **Thomson**

Press (India) Ltd Vs. Nanak Builders & Investors Pvt. Ltd & Others
reported in ***(2013) 5 SCC 397***.

5. The learned Senior Counsel appearing for the petitioners submitted that though the suit was withdrawn by the respondents 1 to 6 in OS.No.107 of 2009, the impugned order if set aside by this Court, any other consequential order made pursuant to the present order would become ineffective. In this regard, he relied upon the judgment in the case of ***State of Kerala Vs. Puthenkavu N.S.S.Karayogam & Another*** reported in ***(2001) 10 SCC 191***, wherein it is held as follows:

"9.Mr.E.M.S.Anam, learned counsel for the petitioner Vadavucode Puthencruz Grama Panchayat submitted that pursuant to the impugned order learned Single Judge had passed consequential orders and he pleads that this Court may interfere with the said consequential orders also. We find it unnecessary because when once the main impugned order is set aside any other consequential order made pursuant to the same would automatically go."

6. Heard Mr.T.P.Manoharan, Senior Counsel appearing for the petitioners, Mr.K.V.Babu, the learned counsel appearing for the respondents 10 to 14 & 16 to 19 in CRP.No.3825 of 2015 and respondents 3 to 11 in CRP.Nos.3824 of 2015; Mr.S.Jaganathan, Government Advocate(CS) appearing for the eighth respondent in CRP.No.3825 of 2015.

7. In the case on hand, the main suit in OS.No.107 of 2007 itself is withdrawn by the respondents 1 to 6 herein and as such it is not a consequential order passed in pursuant to the present impugned order in the civil revision petition. The impugned order in this revision is that rejected the petitioner's request to implead them as defendants in the suit. The main suit itself is dismissed as withdrawn. As such the above judgment is not applicable to the case on hand. Since the suit in OS.No.107 of 2009 filed by the respondents 1 to 6 in CRP.No.3825 of 2015 is now dismissed as withdrawn, nothing survives in the same for further adjudication. Accordingly, the civil revision petition in CRP.PD.No.3825 of 2015 is dismissed.

8. In O.S.No.283 of 2002 filed by the respondents 1 to 11 in civil revision petition in CRP.No.3824 of 2015 for declaration declaring

that they are absolute owners with title of the suit schedule property. In the said suit, according to the petitioners, the portion of the suit schedule property purchased by them by two sale deeds dated 22.12.2008 from the defendants 6 to 8, 11 and 18 to 21 for valid sale consideration. They executed sale deed in their favour and both the sale deeds were presented for registration. Due to Government Order, the Sub Registrar, Gudalur refused to register and returned the same. Therefore, they have interest over the portion of the suit schedule property. Since their vendors are very poor and even struggling to maintain themselves, therefore they were not able to meet out the expenses of the litigation and they offered to sell their entire rights over the suit property. In fact, the possession of the portion of the suit property was also handed over to the petitioners and they are in possession and enjoyment of the same. In support of this contention, the learned Senior Counsel relied upon the judgment in the case of **Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar & Others** reported in **(2018) 7 SCC 639**, wherein it is held as follows:

12. *In the reported decision, this Court has adverted to the principles delineated in K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd. [K.B. Saha & Sons (P) Ltd. v. Development Consultant Ltd., (2008) 8 SCC 564]*

and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment [Dierdre Elizabeth (Wright) Issar v. Ameer Minhaj, 2016 SCC OnLine Mad 31541] that the sale agreement dated 9-7-2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53-A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the trial court after the parties adduce oral and documentary evidence.

9. He also relied upon the judgment in the case of ***D.Devarajan Vs. Alphonsa Mary & others*** reported in **2019 (2) CTC 290**, wherein it is held as follows;

"However, the consequence of non-registration does

not operate as a total bar to look into the contract, as the Proviso to Sec.49 itself carves out two exceptions: Where it can be used for any collateral purposes, and where it can be used as an evidence in a suit for specific performance. When the statute itself prescribes a legislative route within its scheme, that cannot be denied to the appellant herein.”

10. He also relied upon the judgment in the case of **G.Veeramani Vs. N.Soundaramoorthy & Others** reported in **2019 (6) CTC 580**, wherein it is held as follows:

10. From the above judgment, it is clear that even after the amendment, non registration of an agreement of sale does not operate as a total bar to look into the contract, since proviso to Section 49 has carved out an exception. The proviso specifically provides that an unregistered agreement of sale can be used for any collateral purpose and it can be used as an evidence in a suit for specific performance. When such is the position of law, even after the amendment of the Registration Act, the plaintiff, in the present case, stands on a better footing. Therefore, this Court does not find any illegality or infirmity in the order passed by the Court below and the Court below has given cogent reasons for rejecting the objections raised by the defendant and this Court does not

find any reasons to interfere with the same.

In the above judgments, it is held that non registration of sale deed does not operate as a total bar to look into the contract, since proviso to Section 49 of the Registration Act has carved out an exception. It can be used for any collateral purpose and used as an evidence in a suit for specific performance. If unregistered sale deed is proof to an oral agreement of sale, it can be received as evidence making an endorsement that it is received only as evidence of oral agreement of sale under proviso to Section 49 of Registration Act.

11. In the case on hand, the petitioners wanted to implead them as defendants on the strength of the unregistered sale deed executed by some of the defendants in their favour. Therefore, their vendors already there in the party to the suit and they will take care of the suit since no right has been transferred to the petitioners herein. Therefore, the above judgments are not helpful to the case of the petitioners.

12. The learned Senior Counsel also relied upon the judgment in the case of **Thomson Press (India) Ltd Vs. Nanak Builders & Investors Pvt. Ltd & Others** reported in **(2013) 5 SCC**

397, wherein it is held as follows:

54.The third dimension which arises for consideration is about the right of a transferee pendete lite to seek addition as a party defendant to the suit under Order I, Rule 10 CPC. I have no hesitation in concurring with the view that no one other than parties to an agreement to sell is a necessary and proper party to a suit. The decisions of this Court have elaborated that aspect sufficiently making any further elucidation unnecessary. The High Court has understood and applied the legal propositions correctly while dismissing the application of the appellant under Order I, Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order XXII Rule 10 of the CPC, which is as under:

"10Procedure in case of assignment before final order in suit. – (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)." A simple reading of the above provision would show that in cases of assignment, creation or devolution of

any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. What has troubled us is whether independent of Order I Rule 10 CPC the prayer for addition made by the appellant could be considered in the light of the above provisions and, if so, whether the appellant could be added as a party-defendant to the suit. Our answer is in the affirmative. It is true that the application which the appellant made was only under Order I Rule 10 CPC but the enabling provision of Order XXII Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by counsel for the respondents that Order XXII Rule 10 could not be called in aid with a view to justifying addition of the appellant as a party- defendant. Such being the position all that is required to be examined is whether a transferee pendete lite could in a suit for specific performance be added as a party defendant and, if so, on what terms.

55. We are not on virgin ground in so far as that question is concerned. Decisions of this Court have dealt with similar situations and held that a transferee pendete lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. In [Khemchand Shanker Choudhary v. Vishnu Hari Patil](#) (1983) 1 SCC 18, this Court held that the position of a person on whom any

interest has devolved on account of a transfer during the pendency of a suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding. Any such heir, legatee or transferee cannot be turned away when she applies for being added as a party to the suit. The following passage in this regard is apposite:

"6... [Section 52](#) of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. [Rule 10 of Order 22 of the Code of Civil Procedure](#) clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or

a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out.” (emphasis supplied)

56.To the same effect is the decision of this Court in *Amit Kumar Shaw v.Farida Khatoon* (2005) 11 SCC 403 where this Court held that a transferor pendente lite may not even defend the title properly as he has no interest in the same or collude with the plaintiff in which case the interest of the purchaser pendente lite will be ignored. To avoid such situations the transferee pendente lite can be added as a party defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee pendente lite acquires interest in the entire estate that forms the subject matter of the dispute. This Court observed:

"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 the transferee pendente lite is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case" To the same effect is the decision of this Court in *Rikhu Dev, Chela Bawa Harjug Dass v. Som Dass* (deceased) through his Chela Shiama Dass, (1976) 1 SCC 103.*

13. The above judgment cited by the learned Senior

Counsel is also not applicable to the case of the petitioners herein since even according to the petitioners they purchased portion of the suit property by way of unregistered sale deed. No quarrel over that a transferee pendete lite can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. Whereas the petitioners herein purchased some of the suit property, that too by way of unregistered sale deed and they also not produced before the trial court. It can be used for collateral purpose in a suit for specific performance. Here, the suit for declaration of title in favour of respondents 1 to 11. Therefore, the court below rightly dismissed the petition to implead the petitioners as parties in the suit. It would not mean that no right transferred in favour of the petitioners.

14. Accordingly, the civil revision petition in CRP.PD.No.3824 of 2015 is also dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

WEB COPY .03.2021

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

To

The learned Subordinate Judge,
Ooty.



WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



Pre-Delivery order made in
CRP.PD.Nos.3824 & 3825 of 2015

WEB COPY

.03.2021