

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM

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

CRP.PD.No. 2172 of 2016

and

CMP.No.11278 of 2016

1. Kavitha Educational and Charitable
Trust rep.by its Managing Trustee
Mr.K.Rajkumar
2. Kuppusamy (since deceased) ... Petitioners

Vs.

Sivakami Ammal Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 22.12.2015 passed in I.A.No.2039 of 2011 in O.S.No.2056 of 1997 on the file of the Additional District Munsif, Alandur and allow the C.R.P.

For Petitioners : Mr. K.V.Babu

For Respondent : No Appearance

ORDER

This Civil Revision Petition is arising out of fair and decretal order in I.A.No.2039 of 2011 in O.S.No.2056 of 1997 dated 22.12.2015 on the file of the Additional District Munsif, Alandur, thereby, dismissing the petition filed by the petitioners to implead themselves as parties to the suit filed by the respondent herein.

2. The respondent filed a suit for specific performance originally as against one Sulochana, on the strength of the agreement of sale deed dated 04.01.1984. Subsequently, the said Sulochana died and her legal representatives were impleaded as parties to the suit. Pending the suit, the petitioners herein purchased the entire suit property for the valid sale consideration. Thereafter, the petitioners filed a petition to implead themselves as parties to the suit as defendants 5 and 6 in the main suit.

3. The said application was dismissed by the trial Court for the reason that the sale deed dated 28.11.2000 vide [Doc.No.95/2001](#) is subsequent to the agreement of sale deed dated 04.01.1984. In support of the said ground, the trial Court also relied upon the judgement reported in *AIR 2005 SC*

2813, in which the Hon'ble Supreme Court of India held that:-

“ In a suit for specific performance of a contract for sale, a third party or stranger claiming independent title and possession of the contracted property would not, at all, be necessary to be added in the suit. In the event, a third party or stranger to contract are added or impleaded in the suit, the scope of the suit shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law. A third party or a stranger to the contract cannot be added so as to convert a suit of one character into a suit of different character. This addition, if allowed, would lead to a complicated litigation by which the trial and decision of serious questions which are totally outside the scope of the suit would have to be gone into.”

4. The learned counsel for the petitioners submitted that now in this regard, the matter is settled position of law and in support of the same, he cited judgement reported in **(2003) 5 SCC 397 (Thomson Press (India) Ltd., vs. Nanak Builders & Investors (P) Ltd.,)**, wherein, the Hon'ble Supreme Court of India has held as follows:-

“54.The third dimension which arises for consideration is about the right of a transferee pendente lite to seek addition as a party-defendant to the suit under Order 1 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 1 Rule 10 CPC. What must all the same be addressed is whether the prayer made by the appellant could be allowed under Order 22 Rule 10 CPC, which is as under:

“10. Procedure 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 1 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 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC could always be invoked if the fact situation so demanded. It was in any case not urged by the counsel for the respondents that Order 22 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 pendente lite could in a suit for specific performance be added as a party-defendant and, if so, on what terms.

56. To the same effect is the decision of this Court in Amit Kumar Shaw v. Farida Khatoon wherein 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: (SCC p.411, para 16)

“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”

To the same effect is the decision of this Court in Rikhu Dev v. Som Dass.

57. To sum up:

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

57.2. 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.

57.3. 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.

57.4. 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.”

5. The Hon'ble Supreme Court of India held that the 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. In the case on hand, the petitioners had purchased the entire suit property. Therefore, the petitioners are entitled to be as parties/defendants to the suit.

6. Further, in **2014 (4) CTC 814 (V.L.Dhandapani vs. Revathy Ramachandran)**, wherein, this Court has held that:-

“15. Now coming to the reference made, we are of the view that in the light of the decision rendered in Thomson Press (India) Ltd., vs. Nanak Builders and Investors Private Ltd., and others, 2013 (2) CTC 104 (SC) : 2013 (5) SCC 397, that a transferee pendente lite can be impleaded as a party to the suit. However, we make it clear that the question as to whether such a party is entitled to be impleaded will have to be decided from the facts of the case. Accordingly, the reference sought for is answered.

16. In the light of the above pronouncements, we are of the view that all these Revision Petitions will have to be allowed. Merely because the sale has been effected a few years after the pendency of the suit, it would not non-suit the purchaser pendente lite from seeking to implead himself as a party defendant. It is also not as if the petitioners in all these Revisions are trying to put up a different case other than the case of their vendors. There are no materials to hold that the petitioners are not the bona fide purchasers for the value. Considering the above, we are inclined to allow all the Revision Petitions. However, there is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.”

7. In the above case, the Hon'ble Division Bench of this Court held that the transferee pendente lite can be included as a party to the suit. However, it is clear that the question as to whether such a party is entitled to be impleaded is based on the facts of the case. In the case on hand, admittedly the petitioners have purchased the entire suit property from the first defendant herein and as such, they can be impleaded as a parties to the suit.

8. In view of the above, the order passed by the trial Court is perverse and contrary to law. Therefore, the order dated 22.12.2015 in I.A.No.2039 of 2011 in O.S.No.2056 of 1997 passed by the Additional District Munsif, Alandur is set aside. Accordingly, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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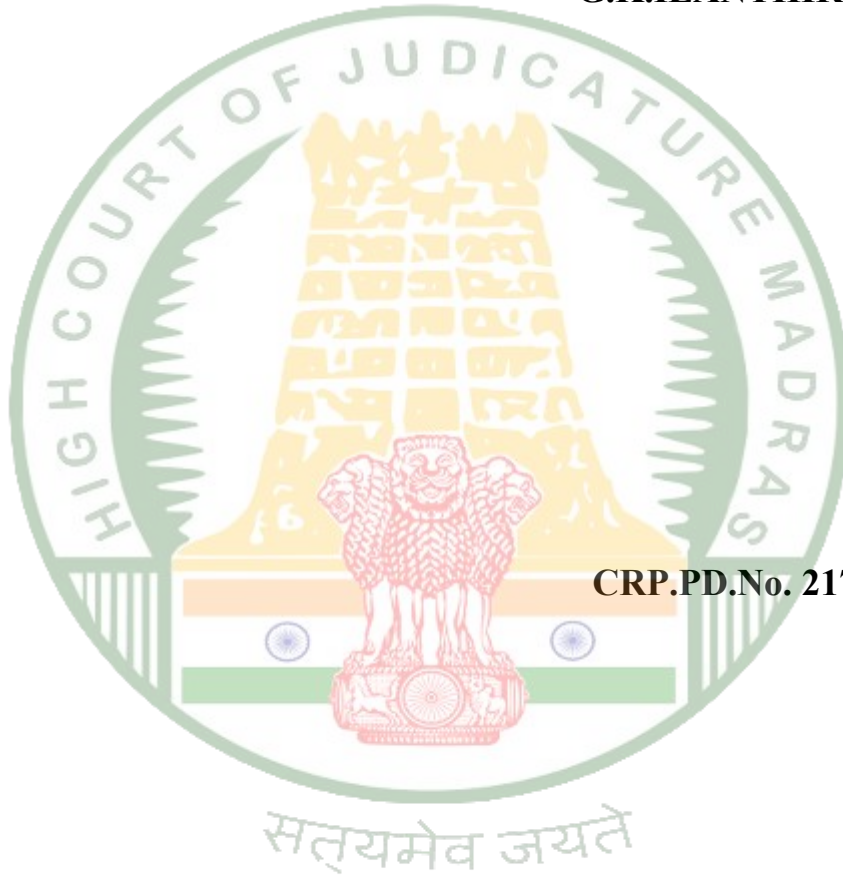
The Additional District Munsif, Alandur.

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G.K.ILANTHIRAIYAN,J.

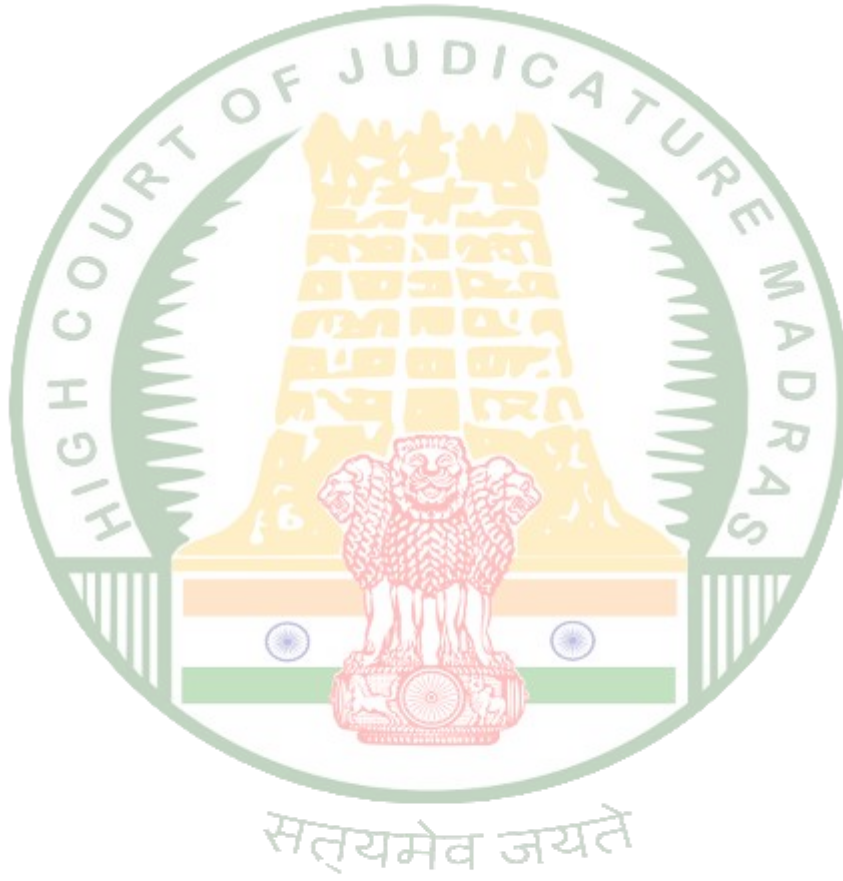
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