



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2021

Pronounced on : 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (MD) .No.52 of 2021

and

C.M.P (MD) No.438 of 2021

WEB COPY

1.Mohandass
2.Jaya Rani
3.Bhuvaneswari

: Petitioners/Respondents No.1 to 3/
Plaintiffs

Vs.

1.Rajmohan
2.Marimuthu
3.Suresh

: Respondents 1 to 3/Petitioners/
Proposed Defendants 2 to 4

4.R.M.Dhayalan

: 4th Respondent/4th Respondent/
Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.6 of 2020 in O.S.No.38 of 2020 on the file of the learned Subordinate Judge, Devakottai, dated 04.11.2020.

For Petitioners : Mr.R.Bala Krishnan

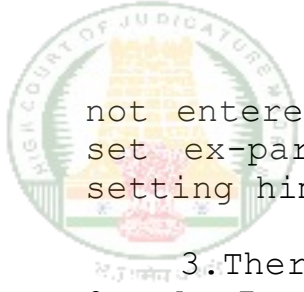
For Respondents : Mr.A.N.Ramanathan
1 to 3

For 4th Respondent : No Appearance

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.6 of 2020 in O.S.No.38 of 2020, dated 04.11.2020, on the file of the Subordinate Court, Devakottai, in allowing the petition for impleadment under Order 1 Rule 10(2) of the Code of Civil Procedure.

2.The revision petitioners, who are the respondents 1 to 3/plaintiffs have filed the suit originally in O.S.No. 23 of 2019, before the District Munsif Court, Devakottai, against the fourth respondent, who is the sole defendant claiming the relief of declaration and recovery of possession and for permanent injunction. Subsequently, on the point of jurisdiction, the suit was transferred to the Subordinate Court, Devakottai and the same was filed in O.S.No.38 of 2020. Since the defendant has



not entered appearance before the District Munsif Court, he was set ex-parte on 14.08.2019 and after transfer, the said order setting him ex-parte was confirmed on 19.03.2020.

3. Thereafter, the defendant has filed the petition under Order 9 Rule 7 C.P.C for setting aside the ex-parte order in I.A.No.4 of 2020 and the learned Subordinate Judge, after enquiry, has passed an order, dated 09.10.2020, dismissing the said petition. During the pendency of the suit, the defendant sold the suit property and adjoining properties to one Kathiresan on 24.10.2019 and thereafter the said Kathiresan died on 01.09.2020.

4. The legal representatives of the deceased Kathiresan, who are the respondents 1 to 3/ third parties have filed the above petition under Order 1 Rule 10(2) C.P.C in I.A.No.6 of 2020, for impleading them as the defendants 2 to 4 in the suit. The learned Subordinate Judge, after enquiry, has passed the impugned order, dated 04.11.2020, permitting the impleadment. Aggrieved by the said order, the plaintiffs have come forward with the present revision.

5. The learned Counsel for the revision petitioners would mainly contend that despite the order of interim injunction granted by the Trial Court restraining the defendant from alienating and encumbering the suit property, the defendant sold the suit property to the father of the respondents 1 to 3 on 24.10.2019 and that the Trial Court ought to have dismissed the impleading application. The learned Counsel would further contend that the learned Trial Judge had erred in holding that the result of the suit will bind the respondents 1 to 3 as contemplated under Section 52 of the Transfer of Property Act, that since the father of the respondents 1 to 3 had purchased the property when the injunction order was in force, neither the purchaser nor the legal representatives of the purchaser can be considered as necessary party or a proper party, that the respondents 1 to 3 have nowhere pleaded in their affidavit that their father had no knowledge regarding the pendency of the civil suit and the order of interim injunction granted and that therefore the impugned order of the learned Trial Judge is legally unsustainable and hence the same is liable to be set aside.

6. The learned Counsel for the respondents 1 to 3 would submit only at the time of police enquiry, they came to know about the pendency of the suit in O.S.No.19 of 2018 and O.S.No.23 of 2019, on the file of the District Munsif Court, Devakottai and the subsequent transfer of the second suit to the file of Subordinate Court, Devakottai, that their father had purchased the suit property and adjoining properties situated in other survey numbers ad-measuring 40 acres on 24.10.2019, vide Document No.3626 of



2019, that the respondents 1 to 3 are necessary parties and that the learned Trial Court has rightly allowed the impleading petition.

7. It is not in dispute that the Trial Court in I.A.No.1 of 2019, has passed an order granting temporary injunction restraining the defendant from alienating or encumbering the suit property till the disposal of the suit. It is also not in dispute that when the temporary injunction was in force, the defendant sold the suit property to the deceased Kathiresan, father of the respondents 1 to 3. The learned Trial Judge, by simply observing that since the defendant had remained ex-parte and his application for setting aside the ex-parte order was also dismissed, the respondents 1 to 3 claiming that their father had purchased the property from the defendant, they have to be given an opportunity to put forth their case and that no prejudice would be caused to the plaintiffs, if the impleadment is permitted.

8. Moreover, the Trial Court has also observed that though Section 52 of the Transfer of Property Act is applicable to the transactions occurred during the pendency of the suit, since the defendant had remained ex-parte, the presence of respondents 1 to 3 is necessary for deciding the issues completely.

9. As rightly contended by the learned Counsel for the revision petitioner, the Trial Court though observed that the sale of the suit property was made, despite the granting of temporary injunction restraining alienation, has not at all dealt with that aspect properly. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in **Surjith Singh and others Vs. Harbans Singh and others** reported in **AIR 1996 Supreme Court 135** and the relevant paragraphs are extracted hereunder:

"On July 29, 1977, the trial Court passed an order restraining all parties from alienating or otherwise transferring in any manner any part of the property involved in the suit. It appears that Pritam Singh assigned his rights under the preliminary decree on June 6, 1979 by a registered deed, partly in favour of the wife of his lawyer Shri Ram Singh Saluja, Advocate, and partly in favour of others, in the teeth of the restraint order of the trial court. On the basis of the assignment deed, the assignees made an application under Order 22 Rule 10 C.P.C., requiring the trial Court to permit their impleadment as parties to the proceedings in the suit. Since they were aware that their claim for impleadment was precarious on account of the existence of the restraint order, they indulged therefore in legalistics in projecting



that the assignment of a decree cannot be confused to be a transfer or alienation of any property and that the decree was barely a paper which had been assigned. They also tried to interpret paragraphs 13 and 14 of the settlement deed to be saying that the grand son of Janak Singh (Pritam Singh being the daughter's son of Janak Singh) could not be bound forever to be not alienating his share of the properties to strangers. The trial court granted the prayer of the assignees. The appeal of Gurdial Singh and Jeevan Singh, plaintiffs (represented by their Lrs), before the Additional District Judge failed on both counts and the High Court dismissed their revision petition in limine, which has given cause to them to appeal to this Court...

It clearly and squarely fell within the ambit of the restraint order. In sum, it did not make any appreciable difference whether property per se had been alienated or a decree pertaining to that property. In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy, when the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens are altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasised is that the assignees in the present facts and circumstances had no cause to be impleaded as parties to the suit. On that basis, there was no cause for going into the question of interpretation of paragraphs 13 and 14 of the settlement deed. The path treaded by the courts below was, in our view, out of their bounds. Unhesitatingly, we upset all the three orders of the courts below and reject the application of the assignees for impleadment under Order 22 Rule 10 C."

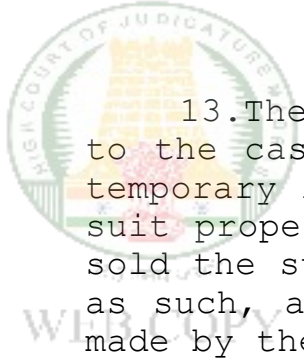


10.It is also necessary to refer to the judgment of the Honourable Supreme Court in **M/s. Prestige Lights Limited Vs. State Bank of India** (Civil Appeal No.3287 of 2007, dated 20.08.2007),

"21.An order passed by a competent Court interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the Court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a 'drastic step' and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but some time such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding the terms and conditions on which a relief is granted by the Court in his favour."

11.A Division Bench of Bombay High Court, reported in **2005 (193 CTR Bombay Bom 229) Keshrimal Jivji Shah and another Vs. Bank of Maharashtra and others**, while dealing with the similar situation, has recognised the principle that "the transfer of immovable property in violation of an order of injunction or prohibition issued by Court of Law, confers no right, title or interest in the transferee, as it is no transfer at all" and that the transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not a party to the proceedings, in which, order of injunction or other prohibitory direction or restrained came to be issued. The Bombay High Court has further held that it is enough that the transferor is a party and the order was in force and that if these two conditions are satisfied, the transfer must not be upheld.

12.Generally, an order of interim or temporary injunction is issued with a view to preserve and protect *status-quo* during the pendency of the suit and that any alteration or change in the *status-quo* as prevailing and directed to be maintained by the Court, is not permissible. It is pertinent to note that if the Courts are not to honour and implement their own orders and encourage party litigants to invent methods of their own to circumvent or short circuit and give a go-by to the obligations and liabilities incurred by them under orders of Courts, the rule of law will become a casualty - a consequence to be jealously averred by all and at any rate by the highest Courts in the State. The Courts cannot allow a party to get away with violation of its prohibitory orders and uphold the transactions, contrary to and in violation of its directions on the plea that the only way in which, the Court can regulate such violations is to visit/impose the penalty with penalties.



13.The legal position referred above, is squarely applicable to the case on hand. As already pointed out, despite granting of temporary injunction, restraining alienation or encumbrance of the suit property and when the said order was in force, the defendant sold the suit property to the father of the respondents 1 to 3 and as such, applying the legal position above referred, the transfer made by the defendant cannot be considered as a transfer at all.

14.It is not the specific case of the respondents 1 to 3 that their father had no knowledge about the pendency of the suit and the subsistence of the injunction order on the date of the sale even as assuming that the purchaser had no knowledge. As already pointed out, the transaction which is entered into either to defeat the order of Court of law or to violate it, confers no right, title or interest in favour of transferee and the legal effect would be that the sale is not a transfer in the eyes of law. If this principle is applied, then nothing further needs to be considered. If despite injunction orders, properties are alienated or disposed of with impunity, then the entire respect for rule of law and administration of justice will be gone.

15.Considering the above, this Court has no hesitation to hold that neither the father of the respondents 1 to 3/ the alleged purchaser nor the respondents 1 to 3 claiming through their father are necessary or proper parties to the suit on hand.

16.One other important aspect to be noted here is, as already pointed out, that the defendant who remained ex-parte, has filed an application for setting aside the ex-parte order and received an adverse order and that after dismissal of the defendants' petition for setting aside the ex-parte order, the above impleading petition came to be filed by the legal representatives of the deceased purchaser. As rightly contended by the learned Counsel for the revision petitioner, the defendant, who had lost his legal battle, is now attempting to achieve the same through the respondents 1 to 3 and such an attempt cannot be entertained at all.

17.Since the defendant himself had lost his battle, the respondents 1 to 3, who are only claiming through their father, who in turn was claiming through the defendant, cannot be allowed to act as a mouth-piece of the defendant and put up the case of the defendant.

18.Viewing from any angle, the decision of the learned Trial Judge, in permitting the impleadment of the respondents 1 to 3 is not good in law and the same is liable to be set aside.

19.In the result, that the Civil Revision Petition is allowed and the impugned order, dated 04.11.2020 passed in I.A.No.6 of 2020, in O.S.No.38 of 2020, on the file of the Subordinate Court,



Devakottai, is set aside and the impleading petition in I.A.No.6 of 2020 shall stand dismissed. No costs. Consequently, the connected Miscellaneous Petition also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

lr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, 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 Subordinate Judge,
Devakottai.
2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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