



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2021

PRONOUNCED ON : 16.08.2021

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P(PD)(MD).No.903 of 2021

and

C.M.P(MD).No.5059 of 2021

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Valli : Petitioner / Petitioner /  
1<sup>st</sup> Defendant

Vs.

1.Subbiah : 1<sup>st</sup> Respondent / 1<sup>st</sup> Respondent /  
Plaintiff

2.S.Shanmugavadivu : 2<sup>nd</sup> Respondents / 2<sup>nd</sup> Respondents  
/ 2<sup>nd</sup> Defendant

**PRAYER:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and executable order dated 07.09.2020 passed in the application in I.A.No.446 of 2019 in O.S.No.107 of 2015 on the file of the Subordinate Court, Ramanathapuram and allow the same.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.K.R.Laxman

**ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.446 of 2019 in O.S.No.107 of 2015 dated 07.09.2020 on the file of the learned Subordinate Court, Ramanathapuram, dismissing the petition filed under Order 7 Rule 11 of CPC.

2. The revision petitioner is the first defendant. The first respondent/plaintiff has laid the suit in O.S.No.59 of 2012 on the file of the District Munsif, Ramanathapuram against the revision petitioner and the second respondent herein, claiming the reliefs to declare that the suit property belongs to the plaintiff and for recovery of possession and for mandatory injunction, for removal of the construction made in the suit property. The defendants 1 and 2 have filed their separate written statements and are contesting the suit. It is not in dispute that subsequently, the plaint was ordered to be returned on the point of pecuniary jurisdiction to be presented before the proper Court.

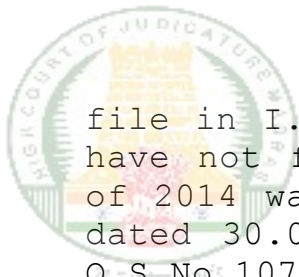


Accordingly, the plaint was filed before the Subordinate Court, Ramanathapuram and the case was taken on file in O.S.No.107 of 2015.

3. Pending suit, the first defendant has filed the application under Order 7 Rule 11 of CPC in I.A.No.446 of 2019 for rejecting the plaint for want of cause of action and that the learned Subordinate Judge, after enquiry, passed the impugned order dismissing the said petition. Aggrieved by the order of dismissal, the first defendant has come forward with the present Civil Revision Petition.

4. The first defendant has filed a short affidavit in support of the petition filed under Order 7 Rule 11 of CPC and wherein, he has stated that the learned District Munsif, Ramanathapuram has returned the plaint for presenting the same before the proper Court, that in the meanwhile, the plaintiff has sold the property to three persons namely Azhagiri, Karthikeyan and Karthik on 01.04.2014, vide document No.738 of 2014, that the plaintiff by suppressing the sale deed, has presented the plaint before the Subordinate Court, Ramanathapuram fraudulently and that since the plaintiff has no cause of action to file the suit, the plaint is liable to be rejected. The plaintiff has filed a detailed counter elaborating as to what had happened from the returning of the plaint by the District Munsif Court, Ramanathapuram, till the suit was taken on file by the Sub-ordinate Court, Ramanathapuram. The plaintiff has admitted the execution of sale deed in favour of Alagiri and two others on 01.04.2014. The plaintiff has taken a defence that he has not presented the suit by suppressing the sale, that the sale made by the plaintiff would be subject to the result of the suit as per the Section 52 of Transfer of Property Act, that the plaintiff has not lost the cause of action, which had arisen earlier and that the first defendant has filed the above petition only to drag on the proceedings.

5. The suit in O.S.No.59 of 2002 was taken on file by the District Munsif Court, Ramanathapuram on 17.12.2002. The plaint was ordered to be returned on 28.12.2006, on the point of pecuniary jurisdiction to be presented before the proper Court and both the parties were directed to appear before the concerned Court on 18.01.2007. Admittedly, the plaintiff has not presented the plaint before the Subordinate Court, Ramanathapuram on 18.01.2007 as directed by the District Munsif Court, Ramanathapuram. But, on the other hand, the plaintiff has presented the plaint on 18.10.2012 before the Subordinate Court, Ramanathapuram along with an application to condone the delay of 2109 days in presenting the plaint before the sub Court. The plaint was returned and re-presented on 16.04.2013 and 02.01.2014 and on 08.01.2014. The petition to condone the delay was taken on



file in I.A.No.121 of 2014 on 20.03.2014 and since the defendants have not filed any counter statement, the petition in I.A.No.121 of 2014 was ordered to be allowed on payment of costs vide order dated 30.09.2015. Subsequently, the plaint was taken on file in O.S.No.107 of 2015 on 12.10.2015.

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6. As already pointed out, the plaintiff has sold the suit property on 01.04.2014. The main contention of the first defendant is that the suit was taken on file on 12.10.2015, by the Subordinate Court, Ramanathapuram and since the plaintiff has already sold the property on 01.04.2014, he has no cause of action on the date when the suit was taken on file and that therefore the plaint is liable to be rejected, as there was no cause of action for the plaintiff to file the suit.

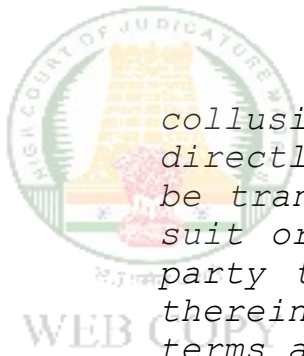
7. No doubt, though the plaintiff was directed to represent the plaint before the Subordinate Court on 18.01.2007, he presented the plaint on 08.10.2012 and that the plaint was ordered to be taken on file on 12.10.2015, after condoning the delay in presenting the plaint. It is pertinent to mention that the first defendant has not filed any counter statement or objection to the petition in I.A.No.121 of 2014 for condoning the delay of 2109 days in presenting the plaint and the said petition was allowed on 30.09.2015, that the first defendant received and accepted the costs paid by the plaintiff and that the first defendant has not challenged the said order passed in I.A.No.121 of 2014 dated 30.09.2015. As rightly observed by the learned Trial Judge, since the petition to condone the delay was allowed on 30.09.2015, the suit must be deemed to have been presented before the Subordinate Court on 18.01.2007, the date, which was fixed by the District Munsif Court for presenting the plaint.

8. As already pointed out, the first defendant, by taking note of the date in which the suit was taken on file by the Subordinate Court, has claimed that the plaintiff has sold the suit property before that date and as such, he was not having any cause of action to file the suit before the Sub Court.

9. As rightly observed by the learned Trial Judge, the issue to be decided is as to whether the presentation of plaint before the Sub-Court or the the date on which the suit was taken on file is to be taken into account for deciding the claim of the first defendant. At this juncture, it is necessary to refer the Section 52 of Transfer of Property Act, which reads as follows:-

***'Transfer of Property pending suit relating thereto:-***

*During the pendency in any Court having authority (within the limits of India excluding the State of Jammu and Kashmir) or established beyond such limits) by (the Central Government) of (any) suit or proceedings which is not*

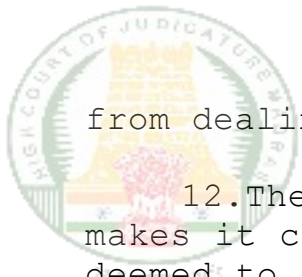


collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein,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

"Explanation:-For the purposes of this Section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and"

10. The learned Trial Judge, by invoking the explanation to the Section 52 of Transfer of Property Act that the pendency of the suit or the proceedings shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings, has held that the plaint was presented before the Subordinate Court on 18.01.2007 and therefore Section 52 of Transfer Property Act is applicable to the alienation made by the plaintiff and the plaintiff has cause of action and the alinee is subject to the result of the suit proceedings.

11. The *lis Pendens* is a very old Doctrine and it origins from the Latin maxim-"*Ut pendent nihil innovetur*", which means that nothing should be introduced during the pendency of the litigation. The effort of Section 52 is not to wipe out the sale *pendent lite* altogether and it only operates as a bar to the extent of right, title and interest that may be determined in favour of the other party. To put it in other way, the gist of the Section is that a transaction made during the pendency of a suit by a party cannot prejudice the interest of the other party. The subject matter of the property should not be transferred to third party, during the pendency of the suit and in case of transfer of such immovable property, the transferee will be bounded by the result of the suit under Section 52 of Transfer of Property Act. Any transfer, pending litigation, will be valid to the extent that it does not affect the right of the opposite party, if any determined or to be determined in the suit. The Doctrine of *Lis Pendens* and its principles of public policy as contemplated under Section 52 of the Transfer of Property Act, 1882 are in compliance with Justice, Equity and Good Conscience. It is pertinent to note that any transfer made during the pendency of the suit is not invalid or illegal and it is only subject to the out come of the litigation. Hence, the transfer is voidable at the option of the affected parties and hence, the transferee only takes the title of the transfer or subject to the result of the pending litigation and mere pendency of the suit, does not prevent any of the parties



from dealing with the property.

12.The explanation to Section 52 of Transfer of Property, makes it clear that the pendency of a suit or proceedings shall be deemed to commence from the date of presentation of the plaint and to continue until the suit or to proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained. It is pertinent to mention that this principle of *Lis Pendens* does not get eliminated even after the dismissal of the suit and that after the dismissal of the suit and before filing of the appeal, the dispute is considered to exist.

13.In the case on hand, it is evident from the records that the plaint was originally filed before the District Musnif Court, Ramanathapuram on 17.02.2002. As already pointed out, the plaint was ordered to be returned on 28.12.2006 for presenting before the proper Court and that though the learned District Munsif has fixed the date of hearing on 18.01.2007, the Plaintiff has presented the plaint on 08.10.2012. Subsequently, the same was returned and re-presented and lastly represented the plaint along with the petition to condone the delay in re-presenting the plaint and that the petition in I.A.No.121 of 2014 was taken on file on 20.03.2014. The learned Trial Judge has observed that since the petition in I.A.No.121 of 2014 to condone the delay in representing the plaint was allowed, the plaint must be deemed to have been presented on 18.01.2007 and that since the suit was deemed to be pending from 18.01.2007, the sale made on 01.04.2014 can only considered as sale *pendent lite* and as such, section 52 is applicable.

14.As already pointed out, the explanation to of Section 52, contemplates that the suit or proceedings shall be deemed to commence from the date of presentation of the plaint or the institution of the proceedings. If that be so, in the present case, the plaint was originally filed in the year 2002 before the District Munsif Court, Ramanathapuram and though the plaint was subsequently returned on the point of pecuniary jurisdiction and the same was re-presented with delay, the suit must deemed to be pending from the date of institution of the suit i.e from 2002 itself and not from 18.01.2007, as stated by the trial Court. Viewing from any angle, the decision of the Trial Court that Section 52 of Transfer the Property is applicable to the alienation made by the plaintiff, that the transferee will be bound by the decision of the Court and that therefore the question of rejecting the plaint for want of cause of action does not arise, cannot be found fault with and consequently, this Court decides that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



15. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is also closed.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

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**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**

The Subordinate Court, Ramanathapuram

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-26559[F] dated 17/08/2021)

C.R.P (MD) .No.903 of 2021  
16.08.2021

PS (CO)

SB(07.09.2021) 6P 3C