



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P (PD) (MD) No. 1891 of 2014

and MP(MD) No.1 of 2014

WEB COPY

K.Raju

.. Petitioner/Petitioner/
Proposed 3rd Defendant

Vs.

1. Kuthalingam

..1st Respondent/1st Respondent/
Plaintiff

2. Sivalingam

3. Samuthirakani

..2nd & 3rd Respondents/2 & 3
Respondents / Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decree made in I.A.No.47 of 2014 in O.S.No.428 of 2010 dated 10.07.2014 on the file of the Additional District Munsif Court, Sankarankovil.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.D.Nallathambi

O R D E R

This Civil Revision Petition has been filed by the petitioner/ 3rd party against the order of the trial Court in dismissing the petition filed by him under Order 1 Rule 10(2) of the Code of Civil Procedure to implead himself as one of the defendants in O.S. No.428 of 2010.

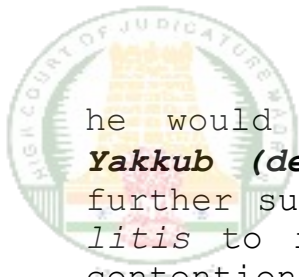
2. The suit in O.S.No.428 of 2010 has been filed by the respondents/plaintiffs against R1 and R2 who are respectively his brother and sister-in-law seeking for partition in the suit scheduled properties and to give half share. The suit for partition was filed on 20.12.2010. During the pendency of the suit, property was sold on 23.10.2013. The second respondent/first defendant and the legal heirs have sold the suit scheduled first property to the revision petitioner by registered sale deed dated 21.10.2013. The revision petitioner who is the purchaser pendente lite had filed the petition under Order 1 Rule 10(2) of the Code of Civil Procedure seeking to implead him as necessary party in the suit. The application had been filed on 06.01.2014, when the case came on for trial, the respondents/plaintiff had filed the



objection in IA No. 47 of 2014 . The Trial Court holding that the petitioner being a purchaser pendente lite is not necessary party had dismissed the petition by order dated 10.07.2014 against which the revision has been filed.

3. The learned counsel for the petitioner would submit that the petitioner without aware of the pendency of the case had purchased the property after paying due consideration to the first defendant and his legal heirs. The petitioner herein being a subsequent purchaser of the property has right over the suit property and no effective decree can be passed in his absence and he is a necessary party to the litigation under Order 1 Rule 10 (2) of the Code of Civil Procedure., whereas the Trial Court without taking into consideration the right of the petitioner had dismissed the application. In support of his contention the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in **Thomson Press India Ltd.vs. Nanak Builders and Investors Private Ltd** and others reported in **2013 5 SCC 397**. He would further submit that the petitioner was not aware of the pending litigation before he purchased the property and the transfer of the suit property pendente lite is not void *abinito* and the petitioner having purchased the property from the first defendant takes the bargain subject to the right of the first defendant in the suit. The Trial Court had rendered an erroneous finding that transfer pendente lite is void as per the Section 52 of the Transfer of the Property Act. He would also rely on the decision of the decision of this Court in the case of **Devaki Thiyagarajan .vs. Ahamed and others** reported in **2015 (4) CTC 293** and seek to set aside the finding.

4. The learned counsel for the respondent would submit that the first respondent has filed the suit seeking partition of the family properties. The suit was filed on 20.12.2010 and the petitioner in collusion with the second defendant inorder to defeat the right of the respondent/plaintiff has purchased a property by a sale deed dated 21.10.2013 after three years of filing of the suit. Though he was well aware of the pendency of the suit, he had not choosen to implead immediately and that impleading application has been filed only on 06.01.2014 when the case was ripe for trial taken up in the special list. He would further submit that the Trial Court finding that the suit is for partition and the right of the petitioner accrues only from the right of the first defendants who had sold the property to the petitioner has rightly dismissed the petition. Further the Trial Court has also found that the petition has been filed only for the purpose of the delaying the trial. He would further submit that the petitioner being a transferee pendente lite can work out equity in final decree proceedings and at the stage of preliminary decree proceedings he is not a necessary party. In support of his contention



he would rely on the decision of **Shakeela Begum vs. Mohammed Yakkub (deceased) and others in A.S.No.827 of 1992**. He would further submit that it is prerogative of the plaintiffs as *dominus litis* to implead the necessary parties. In support of the above contention the learned counsel for the respondent would rely on the decision of the Hon'ble Apex Court in **Gurmit Singh Bhattia . vs. Kiran Kant Robionson and others** reported in **(2020)13 Supreme Court Cases 773**. He would further submit that suit is also seriously and effectively contested by the first defendant who has sold the property to the petitioner. He would further submit that the plaintiffs being the *Dominus litis* cannot be forced to add parties against whom they do not want to fight unless there is a compulsion of rule of law. If the plaintiff do not want to join parties in a pending suit it is always done at the risk of the plaintiff's because they cannot be forced to join the third parties as defendants in the suit. Further the petitioner/defendants being purchasers pendente lite gets only the right what is available to the first defendants and he cannot claim anything more than that of the first defendant.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. The revision is directed against the dismissal of the petition filed under order 1 Rule 10 of the Code of Civil Procedure seeking to implead the petitioner as necessary party. The question which has to be decided is whether the petitioner is a necessary party to be impleaded in the suit or not and not the legality of the sale. In order to analyse the merits of the case, this Court feels it appropriate to refer to the decision of the Hon'ble Apex Court in **Gurmit Singh Bhattia .vs. Kiran Kant Robionson and others** reported in **(2020)13 Supreme Court Cases 773**, wherein the Hon'ble Apex Court has held that in a pending suit if the plaintiff does not want to implead any subsequent purchaser as a necessary party it would have been done at the risk of the plaintiff because he cannot be forced to implead the third parties as party/defendants in the suit. The above decision has been rendered considering the principle that the plaintiff is the *dominus litis* and he cannot be forced to act as against whom he does not want to fight unless there is a compulsion of rule of law. However in this case the trial Court has gone beyond the scope of necessity of impleadment of parties had rendered a finding that transfer of suit properties during pendency of suit is void. In this regard in **T.Ravi and another . vs. B.Chinna Narasimha and others** reported in **(2017) 7 SCC 342**, the Hon'ble Apex Court has held that the transfer of property during the pendency of the suit relating thereto in contravention of Section 52 of the Transfer of property act does not render such



transfer void but renders a subservient to the right of the parties in litigation until the proceedings attains finality and thereby the findings of the Trial Court with regard to that aspect alone has to be set aside.

7. In ***Shakeela Begum.vs.Mohammeed Yakkub (deceased) and others in A.S.No.827 of 1992***, this Court has held that the transferee pendente lite /subsequent purchaser has secured right to work out equity in final decree proceedings and therefore he is not a necessary party at the stage of passing preliminary decree.

8. As stated above, the petitioner being a third party and purchaser of property pending suit his right accrues from the first defendant from whom he had purchased the property as right subservient to the right of the parties in litigation until the proceedings attains finality. The plaintiff being *dominus litis* cannot be forced to implead the petitioner. The Trial Court had rightly dismissed the petition seeking to implead the petitioner, however the findings of the Trial Court that the sale of property pending suit is void cannot be sustained.

9. In view of the above, the Civil Revision Petition stands closed. granting liberty to the petitioner to implead at the stage of final decree proceedings. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2021

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 Additional District Munsif Court, Sankarankovil

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-30800[F]dated 30/09/2021)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-30824[F]dated 30/09/2021)

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RK/PM (02/11/2021) 4P 4C

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