



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Twenty Second day of February Two Thousand Twenty Two

PRESENT

THE HON`BLE DR.JUSTICE G.JAYACHANDRAN

CMP.NOS.9714 AND 18886 OF 2021

IN AS.NOS.893 OF 2008 AND 86 OF 2012

U.ABUBAKKER

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 PAPPU

[RESPONDENTS IN CMP.NO.9714/2021]

2 BASKAR

3 D.PONSINGH

4 BALAMMAL

5 RAMASAMY CHETTIAR

6 PALANI CHETTIAR

7 CHINNAMMAL

8 PALANIAMMAL

9 SARASWATHI

10 MUTHUSAMY

1 PALANI CHETTIAR

[RESPONDENTS IN CMP.NO.18886/2021]

2 D.PONSINGH

3 BALAMMAL

4 RAMASAMY CHETTIAR

5 PAPPU

6 BASKAR

7 CHINNAMMAL

8 PALANIAMMAL



9 SARASWATHI

10 MUTHUSAMY

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Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the petitioner as the 9th respondent in the above AS.NO.893/2008 (CMP.NO.9714/2021) and;

ii) To implead the petitioner as the 10th respondent in the above AS.NO.86/2012 (CMP.NO.18886/2021)

Order : This Miscellaneous petitions coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.D.SIVAKUMAR, Advocate for the petitioner in both the petitions and of MR.C.JEGADISH, Advocate for the Respondents in both the petitions, the court made the following order:-

Pending appeal, one Mr.Abubakker has filed these applications to implead himself as one of the respondents in the above appeals on the ground that the part of the decree has been assigning in his favour vide a registered deed dated 02.03.2010.

2.The suit for specific performance was filed in the year 1994 for suit schedule properties listed under three different schedules. The trial court has allowed the suit partially and being aggrieved by the said judgment and decree, the fifth and sixth defendants had preferred appeal in A.S.No.893 of 2008 and the fourth defendant had preferred separate appeal in A.S.No.86 of 2012. The decree is dated 22.08.2008.

3.On 12.12.2008, when A.S.No.893 of 2008 was heard by the Division Bench of this Court, interim stay restricting the decree holder from proceeding with the execution of the decree in respect of Plot Nos.1, 2, 2A, 23 to 28 and 28A covered under Exs.A3 and A4 comprising around 22,000 sq.ft. alone was granted and the said interim order is still in force. While so, the petitioner herein had got a made over of 50% of the decree in his favour under the registered deed dated 02.10.2010 and wants to get himself impleaded in the appeal as a respondent.

4.This Court is of the view that made over of the decree in favour of the third party can be enforced and acted upon before the Execution Court at the time of execution. The assignee can get the fruits of the decree assigned in his favour before the Execution Court. More over when the actual decree holder is a party before this Court as respondent and contesting the appeals through counsel and the assignment deed indicates only half of the interest in decree been assigned to the petitioner herein.



5. Learned counsel for the petitioner would rely upon two judgments to emphasize that in the appeal, the assignee of the decree is entitled to get himself impleaded. The first judgment is of the Supreme Court reported in **2006(1) SCC 725, Saraswati Devi Gupta vs Sudha Rani and Others**, wherein at paragraph No.3, it is stated as follows:

"3. At that stage a contention was advanced before this Court that the appellant, who was the transferee from the decree-holder, had no locus standi to prefer the appeal. This Court noticed that when the appellant (the assignee) had made an application before the High Court for being joined as a respondent, the High Court had passed an order to the effect that the applicant be brought on record as a respondent in the appeal, but it would be open to the appellant (before the High Court) to raise such objections as they would like about the locus standi of the applicant qua the controversy which had to be decided in the appeal, at the time of final hearing. This Court noticed that despite the liberty given to raise objections as to the locus standi of the assignee, no such objection was raised."

6. From the said observation, it is clear that the impleading petition of the assignee was order not unconditionally but on condition and subject to the right of objection. In that case, the respondent has not filed any objection and therefore, the impleading order was sustained.

7. The next judgment reported in **2021 Supreme (SC) 1090, Anapurna Jaiswal vs Indian Oil Corporation Ltd.**, is based on the equity principle and the Supreme Court relying upon the judgment of the Privy Council reported in 12 Moo Ind App 275 (PC) (E), had recognised the assignment and permitted the assignee to participate in the appeal proceedings and it is observed at paragraph 11 as follows:

"....It is only by the operation of the equitable principle that as soon as the property comes into existence and is capable of being identified, equity taking as done that which ought to be done fastens upon the property and the contract to assign thus becomes a equitable assignment. In the case of a decree to be passed in the future therefore there could be no assignment of the decree unless and until the decree was passed and the agreement to assign fastened on the decree and thus became a complete equitable assignment. The decree not being in existence at the date of the transfer cannot be said to have been transferred by the assignment in writing and the matter resting merely in a contract to be performed in the future which may be specifically enforced as soon as the decree was passed there would be no transfer automatically in favour of the "transferee" of the decree when passed."



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This judgment explain when an assignment of decree is valid. This judgment clarifies that future decree cannot be assigned. In the instant case, assignment of decree is during pendency of appeal and appeal is continuation of the suit.

8. This Court is of the view that these two judgments to the facts of the case on hand have little relevance. The assignment deed is partial assignment of the decree and executed when the interim order restricting execution of certain items of the suit property. Therefore, the impleading petitioner herein should necessarily await for the outcome of the appeal, if there is stay. Otherwise, he can approach the Executing Court for enforcement of the decree based on the assignment. The validity of the assignment of the decree or otherwise has to be considered only by the Executing Court and not by this Court in an appeal proceedings. With this observation and liberty to the impleading petitioner, these impleading petitions are disposed of.

Post the main appeal for final hearing on **09.03.2022**.

-sd/-

22/02/2022

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE ADDITIONAL DISTRICT JUDGE,
FAST TRACK COURT, NAMAKKAL.

Order

in

CMP.NOS.9714 AND 18886 OF 2021

IN AS.NOS.893 OF 2008 AND 86 OF 2012

Date : 22/02/2022

From 26.2.2001 the Registry is issuing certified
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