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C.R.P.No.3254 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2022

PRONOUNCED ON : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3254 of 2022
and
C.M.P.No.17267 of 2022

J.Dinakaran

... Petitioner

VS

1.P.Gowri Ammal
2.C.P.Senthilkumar
3.Ramathilagam @ Thilagam
4.Shanthi
5.D.Maheswari
6.J.Bhuvana
7.J.Devaraj
8.M.Kasthuri
9.J.Govindan
10.J.Damodharan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the dismissal order dated 24.03.2022 in I.A.No.1 of 2021 in O.S.No.12610 of 2010 on the file of the learned XIX Additional Judge, City Civil Court, Chennai and allow this Civil Revision Petition.



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For Petitioner : Mr.B.Manivannan

For R1 and R2 : Mr.K.V.Ananthakrishnan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner to implead himself as a 9th defendant in the suit in O.S.No.12610 of 2010.

2. The respondents 1 and 2 herein filed a suit for specific performance against the respondents 3 to 10 in C.S.No.845 of 2006 on the file of this Court. The same was subsequently transferred to the file of XIX Additional City Civil Court, Chennai and renumbered as O.S.No.12610 of 2010. The respondents 1 and 2 sought for specific performance of the sale agreement entered by them with respondents 3 to 10/defendants on 21.12.2005 for purchase of suit property. It appears pending suit, the respondents 3 to 10 sold the suit property to Sajjadh Adeebh and Mohammed Zahid Hussain on 01.12.2006 under a Registered Sale Deed. Thereafter, the petitioner herein purchased the suit property from the said Sajjadh Adeebh and Md. Zahid



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Hussain on 17.10.2008. The suit in O.S.No.12610 of 2010 was decreed *exparte* against the respondents 3 to 10 and decree for specific performance was passed in favour of the respondents 1 and 2. Thereafter, they filed execution petition in E.P.No.23 of 2018 for execution of the decree for specific performance. The petitioner on acquiring knowledge about the suit and the *exparte* decree filed a petition to get himself impleaded as a 9th defendant in the suit and also to set aside the *exparte* decree. It was the case of the petitioner that he had purchased the suit property without notice of pending litigation. The petitions filed by him for impleading, to set aside the *exparte* decree and to stay the execution petition were dismissed by the Court below by common order dated 24.03.2022. Aggrieved by the order dismissing his impleading application, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the petitioner is a *bona fide* purchaser, who purchased the suit property without notice of the pending litigation. The learned counsel also submitted that the petitioner is the present owner of the property and he is aggrieved by the execution of the decree and consequently, he has got *locus standi* to file a petition to set aside



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the *exparte* decree and to implead himself as party in the suit. It was further submitted by the learned counsel for the petitioner that a purchaser *pendente lite* is a person bound by the decree passed in the pending litigation and hence, he is entitled to get himself impleaded and also to get the *exparte* decree set aside. The learned counsel for the petitioner in support of his contention that the *pendente lite* purchaser is entitled to maintain a petition to set aside the *exparte* decree and to get himself impleaded as a party relied on the decision rendered by the Hon'ble Apex Court in ***Raj Kumar vs. Sardari Lal and others*** reported in **2004 (1) CTC 549**, which has been followed by this Court in ***N.Rajaram vs. R.Murali and others*** reported in **MANU/TN/5112/2019**. The learned counsel for the petitioner submitted that the petitioner acquired knowledge about the litigation and the execution proceedings only when he received a letter dated 26.12.2019 from original defendant in the suit informing him about the *exparte* decree. It was his contention that the petitioner has acquired knowledge about the pending litigation and execution proceedings only during December-2019.



4. Per contra, the learned counsel appearing for the contesting respondents 1 and 2 submitted that the contention of the learned counsel for the petitioner that the petitioner acquired knowledge about the pending litigation only during December-2019, after receipt of letter from 3rd respondent cannot be accepted in the light of Exs.R2 and R3 viz., letter sent by the learned counsel appearing for the respondents 1 and 2 to the petitioner and his vendors wherein the pending litigations and the *exparte* decree passed against the defendants therein viz., vendors of the present petitioner's vendor were clearly mentioned. Therefore, it is the submission of the learned counsel for the respondents 1 and 2 that the petitioner acquired knowledge about the pending litigation even in the year 2008 and kept quiet for nearly 13 years and thereafter, filed the present petition to implead himself as a party in the suit along with the petition to set aside the *exparte* decree in the year 2021. Therefore, in the light of Exs.R2 and R3, the present petition for impleading filed by the revision petitioner is only an attempt to drag on the proceedings with *mala fide* intention. The learned counsel further submitted that the defence of bona fide purchaser is not available to a person, who purchased the property pending litigation and consequently, any decree passed against



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him is binding on him under Section 52 of the Transfer of Property Act, 1882.

The learned counsel further submitted that the respondents 1 and 2/plaintiffs made bonafide attempts to implead the subsequent purchasers viz., the vendors of the petitioner by filing an application in A.No.141 of 2007 in C.S.No.845 of 2006 and the said application was dismissed by this Court on the ground that in a suit for specific performance, the subsequent purchasers were not necessary parties as any transaction pending suit would be hit by doctrine of *lis pendens*. When the application to implead the vendors of the petitioner was already dismissed, the present petitioner who claims right under him is not entitled to maintain another application for impleading himself. The learned counsel for the respondents 1 and 2 relied on the decision of the Hon'ble *Apex Court in Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and others* reported in **2010 (2) SCC 726** for the proposition that a person who approaches the Court for grant of relief is under a solemn obligation to candidly disclose all the material facts concerning the issues raised in the case.



WEB COPY 5. It is the submission of the learned counsel for the respondents 1 and 2 that the petitioner having acquired knowledge about the pending litigation in the year 2008, as exhibited by Exs.R2 and R3, suppressed the same in the present application for impleading. The learned counsel also relied on the judgement of the Hon'ble Apex Court in **Balvanth N.Viswamitra vs. Yadav Sadashiv Mule** reported in **(2004) 8 SCC 706** for the proposition that only a void decree can be challenged even at the time of execution, but however any other decree which is not void, even if erroneous or illegal cannot be objected to in execution or collateral proceedings.

6. In reply, the learned counsel for the petitioner submitted that Ex.R3/acknowledgement card does not contain the signature of the petitioner and therefore, knowledge imputed to petitioner based on Exs.R2 and R3 cannot be accepted. It is the contention of the learned counsel for the petitioner that the petitioner acquired knowledge about the pending litigation and execution proceedings only in December-2019 only based on the letter written by the 3rd respondent which was marked as Ex.P5.



7. Heard arguments of the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the typed-set of papers filed by either parties.

8. It is seen from the records that the respondents 1 and 2/plaintiffs entered into agreement of sale for purchase of the suit property on 21.12.2005 with respondents 3 to 10. The suit for specific performance was filed by the respondents 1 and 2 in C.S.No.845 of 2006 on the file of this Court on 06.10.2006. Thereafter, pending suit, the vendors of the petitioner's viz., Sajjadh Adeebh and another purchased the property from the defendants therein on 01.12.2006. Immediately, the respondents 1 and 2 filed an application in I.A.No.141 of 2007 in C.S.No.845 of 2006 for impleading the vendors of the petitioner as they purchased the suit property pending suit. The said application was dismissed by this Court by holding that the vendors of the petitioner were not necessary parties to the suit as they purchased the property pending litigation. It is also seen from the records that subsequently C.S.No.845 of 2006 was transferred to the file of XIX Additional City Civil Court, Chennai on the ground of pecuniary jurisdiction and renumbered as



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O.S.No.12610 of 2010. Thereafter, an *ex parte* decree was passed against the defendants in the suit and execution petition was also filed for execution of the *ex parte* decree. The vendors of the petitioner's vendor filed an application in I.A.Nos.31 and 32 of 2013 to set aside the *ex parte* decree and to condone the delay of 673 days in filing the petition to set aside the *ex parte* decree. Those petitions were allowed by the Trial Court and on revision before this Court in C.R.P.(NPD).Nos.3928 and 3929 of 2013, the said order was set aside and petition filed by the defendants in the suit viz., the vendors' vendor of petitioner to set aside the *ex parte* decree with condone delay petition were dismissed.

9. It is also seen from the records that Section 47 application filed by the judgement debtor in EP was dismissed. The main contention raised by the learned counsel for the petitioner is that he purchased the suit property pending suit for specific performance without knowledge of the pending litigation. Therefore, he is a *bona fide* purchaser for value.



10. It is settled law that as far as doctrine of *lis pendens*, which is statutorily recognised in India under Section 52 of the Transfer of Property Act, 1882, the defence of the *bona fide* purchaser is not available.

11. Section 52 of the Transfer of Property Act, 1882, reads as follows:-

“52. 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 immoveable 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 complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

12. A close scrutiny of Section 52 of the Transfer of Property Act, 1882 makes it clear that a *bona fide* purchaser of the suit property for value without notice of pending litigation is not recognised as an exception for application of doctrine of *lis pendens*. Therefore, the revision petitioner cannot claim himself as a *bona fide* purchaser without knowledge of pending litigation. By virtue of operation of Section 52 of the Transfer of Property Act, 1882, the decree passed by the Competent Court is binding on the *pendente lite* purchaser.

13. Exactly, that is the reason why the Hon'ble Apex Court in the decision reported in ***Raj Kumar vs. Sardari Lal and others*** reported in **2004 (1) CTC 549** held that the *pendente lite* purchaser is entitled to maintain an application to set aside the *exparte* decree passed in a suit for specific



performance. It would be appropriate to refer to the observations of the

WEB C Hon'ble Apex Court in the said decision which reads as follows:-

“The doctrine of lis pendens expressed in the maxim 'ut lite pendente nihil innovetur' (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act 1882. A defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendente lite is treated in the eye of law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither the defendant has chosen to bring the transferee on record by apprising his opponent and the Court of the transfer made by him nor the transferee has chosen to come on record by taking recourse to Order 22 Rule 10 of the CPC. In case of an assignment creation or devolution of any interest during the pendency of any suit. Order 22 Rule 10 of the CPC confers a discretion on the Court hearing the suit to grant leave for the person in our upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. Though not brought on record the lis pendens transferee remains bound by the decree.”



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14. Therefore, it is clear that a *pendente lite* purchaser is bound by the decree. However, in the present case, the petitioner filed an application to implead himself as a party defendant and also filed a petition to set aside the *exparte* decree on the strength of ratio found in the aforesaid case law. These applications were filed by the petitioner mainly on the ground that the petitioner acquired knowledge about the pending litigation only during December-2019 after receipt of letter from 1st defendant in the suit under Ex.P5. It is pertinent to note that Ex.R2 is the notice sent by the Advocate of the respondents 1 and 2/plaintiffs to *pendente lite* purchaser viz., the petitioner and the vendors of the petitioner.

15. In the said notice, the details of the pending litigation are clearly mentioned and it was also made clear that the purchase by the petitioner is only subject to the result of the suit. The said notice was received by the petitioner as seen from the postal acknowledgement card which was marked as Ex.R3. The learned counsel for the petitioner in his reply submitted that



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the signature found in Ex.R3 is not that of the petitioner. The said stand is taken by the petitioner only for the first time before this Court. Exs.R2 and R3 were referred to by the respondents 1 and 2 in their additional counter to the petition for impleading filed by the revision petitioner as seen from the extract of the additional counter found in the impugned order. The petitioner failed to file any reply to the additional counter filed by the respondents 1 and 2 by denying the receipt of letter under Ex.R2.

16. When Exs.R2 and R3 were marked before the Court below, the petitioner failed to raise his little finger by raising any objections. Even in the present memorandum of grounds, the petitioner has not raised any specific ground by stating that the signature found in Ex.R3 is not that of the revision petitioner. When a registered letter is sent to the petitioner by giving proper address and it is acknowledged under Ex.R3, there is a presumption in law it is served on the revision petitioner. Before the Court below, the revision petitioner failed to raise any objections regarding receipt of Ex.R2 and hence, it is too late for the petitioner to say that Ex.R2 notice was received by him.



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WEB COPY 17. It is also seen that the respondents 1 and 2 *bonafidely* filed an application in I.A.No.141 of 2007 in C.S.No.845 of 2006 to implead the vendors of the present petitioner viz., Sajjadh Adeebh and another in the suit. But the said impleading petition was dismissed by this Court on the ground that the subsequent purchasers were not necessary party to the suit in view of Section 52 of the Transfer of Property Act, 1882.

18. The said order was not challenged by the vendors of the petitioner. Therefore, the present petitioner who is claiming right under his vendors is not entitled to file another application for his impleadment. Though learned counsel for the petitioner submitted that his vendors and vendors' vendor who were arrayed as defendants in the suit suppressed the pending litigation and he had no knowledge about the pendency of the suit. As discussed earlier, the petitioner cannot raise defence of the *bona fide* purchaser as against doctrine of *lis pendens*.



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WEB COPY 19. In view of the discussions made earlier, the order passed by the Court below dismissing the petition seeking impleadment of the petitioner requires no interference by this Court.

20. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

10.01.2023

NCC : Yes
Index : Yes
Speaking Order : Yes / No

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The XIX Additional Judge,
City Civil Court, Chennai.



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S.SOUNTHAR, J.

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