



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 24.04.2022

Delivered On: .04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.3668 of 2022

and

C.M.P.No.19451 of 2022

1. Sumathi @ Sumithradevi
2. Senathipathi
3. Dr.M.Kumari Vinodhana ... Petitioners/Respondents/Plaintiffs

Vs.

1. Muthukumar
2. Shanmugasundaram ... Respondents/Petitioners/Proposed Parties
3. M.Natarajan (Died)
4. Pattathammal (Died)
5. Muruganandam
6. Sivakumar
7. Shanmugapriya (Died)
8. Jothimani
9. Ayyasamy (Died)
10. Muthukrishnan
11. T.Paranthaman
12. T.Dhanalakshmi
13. N.Sivakumar
14. M.Gopalakrishnan
15. Zamin Kaliapuram Co-operative Society,
Rep. By its Secretary
Society Building,
Zamin Kaliapuram Sulakkal Post,
Pollachi Taluk.
16. Varadharaj @ Raju
17. Abinaya Malan ... Respondents/Respondents/Defendants



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal Order dated 26.09.2022 in I.A.No.3 of 2022 in O.S.No.90 of 2008 on the file of the learned Sub Judge, Pollachi and to allow the above Civil Revision Petition.

[Prayer amended vide Court order dated 24.04.2023 made in C.M.P.No.9666 of 2023 in C.R.P.No.3668 of 2023 by SSKJ]

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.T.V.Ramanujam
Senior Counsel for
C.Jagadish for R1 & R2

Mr.P.Harish
Government Advocate (Civil Side) for R15

ORDER

This Civil Revision Petition had been filed to set aside the fair and decretal Order dated 26.09.2022 in I.A.No.3 of 2022 in O.S.No.90 of 2008 on the file of the learned Sub Judge, Pollachi.

2. The learned Counsel for the Revision Petitioners submitted that the Plaintiff in O.S.90 of 2008 before the learned Sub Judge, Pollachi is the husband of the first Petitioner and the father of the second and third Petitioners. This Civil Revision Petition had been filed against the order



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passed by the learned Sub Judge, Pollachi by allowing I.A.No.3 of 2022 in O.S.No.90 of 2008 filed under Order I, Rule 10 of Civil Procedure Code by the Respondents 1 and 2 herein/third parties to the suit, for impleading themselves as Defendants in the Suit.

3. Before proceeding with the arguments, the learned Counsel for the Revision Petitioners submitted the few facts, which are necessary for deciding this Civil Revision Petition, are as follows:-

3.1.The Suit was filed for relief of specific performance of agreement for sale entered into by the Plaintiff/Natarajan with one Duraisamy Gounder and his younger brother Chinna Duraisamy Gounder. The brothers viz., Duraisamy and Chinna Duraisamy Gounder had in possession of 13 Acres, 61 Cents of the property jointly. The elder brother/Duraisamy Gounder had been in enjoyment of the Southern portion in S.F.No.41, roughly about 6 Acres and 81 Cents. The younger brother/Chinna Duraisamy Gounder had been in enjoyment of Northern portion in S.F.No.41, roughly about 6 Acres and 80½ Cents. While so, both the brothers had debts with various parties. Therefore, to repay the debts, they decided to sell their properties. They had partitioned the property among themselves whereby they had equally



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divided the total extent of 13.61 Acres into 6 Acres and 80½ Cents each.

The elder brother entered into a sale agreement with the said Natarajan whereby Natarajan offered to clear the debts of Duraisamy Gounder to various parties in writing. The said Duraisamy Gounder had executed the sale agreement, according to which, after settling the dues to various parties, the said Natarajan had to pay Rs.1,00,000/- towards the sale price of the property. This sale agreement was executed between Duraisamy Gounder and Natarajan. Nine months time was granted for the parties to the contract. The said Natarajan had settled the dues of the said Duraisamy Gounder. Subsequently, Duraisamy Gounder died. The major sons and daughters were witnesses to the sale agreement. Therefore, in continuation of the sale agreement entered into with Duraisamy Gounder, the said Natarajan sought execution of sale deed by the legal heirs of Duraisamy Gounder. The legal heirs of Duraisamy Gounder delayed the execution of the sale deed stating that the patta is still in the name of the deceased Duraisamy Gounder and they had to get transfer of patta in the name of legal heirs of Duraisamy Gounder. Meanwhile, after getting patta transfer in the name of the legal heirs of deceased Duraisamy Gounder, they had sold the property to different parties. When the sale agreement was



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subsisting and not cancelled, they cannot alienate the same. Therefore, the Plaintiff had filed the Suit for specific performance of contract regarding the sale agreement with Duraisamy Gounder. Since Duraisamy Gounder died, it was performed through his legal heirs.

3.2. In the same way, the said Natarajan had entered into the sale agreement with the younger brother of Duraisamy Gounder viz., Chinna Duraisamy Gounder. This sale agreement was only an oral agreement. Based on this oral agreement, Natarajan had settled the loans/debts of Chinna Duraisamy Gounder. Therefore, in continuation of the oral sale agreement, Chinna Duraisamy Gounder executed the sale deed for 6 Acres and 80½ Cents in S.F.No.41 which is on the Northern portion of the property belonging to Chinna Duraisamy Gounder.

4. The learned Counsel for the Revision Petitioners had invited the attention of this Court to the sale agreement entered in the year 1994 and the recitals therein in the typed set furnished along with this Civil Revision Petition.



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5.The learned Counsel also invited the attention of this Court to the endorsement in the sale agreement to the patta transfer in the name of Legal heirs of Duraisamy Gounder. Also, to the patta transfer from Duraisamy Gounder's legal heirs to third parties for which the husband of the first Petitioner and the father of the second and third Petitioners, as Plaintiff, had approached the District Collector, Coimbatore, regarding alienation and change of patta. When the suit for specific performance is pending, the District Collector had passed orders, thereby restraining the legal heirs of Duraisamy Gounder from changing patta from the legal heirs of Duraisamy Gounder to other person till the disposal of the suit. After the death of Duraisamy Gounder, sons and daughters of Duraisamy Gounder were impleaded as Defendants 2 to 4 and they had filed written statement denying the averments in the plaint in O.S.No.90 of 2008. When the suit is pending, the sons and daughters of Duraisamy Gounder/Defendant No.2 to Defendant No.4 had executed sale deed in favour of fifth and sixth Defendants with the help of patta in favour of Defendants 2 to 4. For which, the Plaintiff/Natarajan had objected before the District Collector. Therefore, District Collector had issued instructions not to grant Patta transfer. Defendants 5 and 6 had also given an undertaking that they will



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not transfer the patta further and to co-operate with the Court. When the suit was pending, Defendants 5 and 6 had sold the property to Defendants 7 and 8. Therefore, Plaintiff was forced to implead Defendants 5 to 8. Defendants 7 and 8 wanted change of patta in their name which was objected by the Plaintiff. Accordingly, the District Collector had issued order stating that the Patta granted to Defendants 5 and 6 shall be based on the outcome of the Suit in O.S.No.90 of 2008. Since Defendants 7 and 8 sought transfer of patta, the District Collector had refused it. Defendants 7 and 8 had given written undertaking stating that the change of patta in their favour will be subject to the outcome of the Suit. In spite of such undertaking Defendants 7 and 8 sought transfer the patta to Defendant 9. Therefore, the Plaintiff had filed Petition seeking to implead the purchaser from Defendants 7 and 8. While so, Defendants 8 and 9 executed sale deed in favour of Defendants 10 and 11 in the year 2013. Defendants 10 and 11 are not *bona fide* purchasers as they were aware of the proceedings pending before the Court. Apart from that, after purchase of property, during the pendency of the suit, Defendants 10 and 11 had created mortgage in favour of Defendants 12 - Zamin Kaliapuram Co-operative Society and obtained loan. Also, they had filed petition under Order VII, Rule 11 of CPC in



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IA.No.165/2012 to reject the plaint. That petition was dismissed.

Defendants 7 to 9 filed written statement only on 03.06.2019. Defendants 10 to 12 had not filed written statement. The Respondents 1 and 2 in the Civil Revision Petition are the purchasers of the suit property from Defendants 9 to 11 which was objected by the Plaintiff. Even though the Suit was instituted in the year 2008, the Plaintiff was unable to proceed with the trial due to the conduct of the Defendants 2 to 4/Legal heirs of the original Defendant/Duraisamy Gounder. There is no dispute with regard to the sale agreement and sale with regard to the younger brother Chinna Duraisamy Gounder who had fairly executed the sale deed in favour of the Plaintiff. With an intention to protract the proceedings and to prevent the trial, the Defendants 2 to 4, who were the legal heirs of the original Defendant Duraisamy Gounder, had been indulging in sale of property with various parties subsequently. Therefore, ignoring the principle of "*lis pendens*", the purchasers had taken the risk upon themselves to face the consequence in the suit for specific performance. The proceedings of the Defendants 2 to 4 in creating sale deeds against the principle of "*lis pendens*" and thereby creating complication by filing the implead petitions in the original suit filed by the Plaintiff/Natarajan in O.S.No.90 of 2008.



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Till date the Suit could not be proceeded because of the conduct of the Defendants. After execution of the sale deed, the Respondents 1 and 2 herein had also filed another Suit in O.S.No.278 of 2021 restraining the Defendants therein from interfering with the peaceful possession and enjoyment as though they are in possession. Also, they had sought to declare the sale agreement deed in favour of the Plaintiff/Natarajan to be declared as null and void. The Respondents 1 and 2 herein are the 5th purchaser who had purchased the property knowing fully well about the dispute. Therefore, they cannot seek as of right to implead himself as Defendants in the Suit. The continuous sale created by Defendants 2 to 4 ignoring the principle of "*lis pendens*" had caused difficulties to the Plaintiff to prosecute the case. The Plaintiff with abundant caution had impleaded earlier purchasers. Till date, the trial in the Suit could not be proceeded. Therefore, continuous sale had to be put to an end to. Therefore, the Plaintiff had objected. In the impleading Petition under Order I, Rule 10 of CPC, the learned Sub Judge, Pollachi had ignored the objections of the Plaintiff and allowed the Interlocutory Application. The "*lis pendens*" purchasers, who had taken the risk, are protected by the principle that what is the defence of the Original Defendant will be applicable to the subsequent



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purchaser. The Respondents 1 and 2 in this Petition had filed O.S.No.278 of 2021 challenging the sale agreement with the original vendor by the Plaintiff. The fifth purchaser has no *locus standi* to challenge the sale agreement entered into with the original Defendant and the original Plaintiff. Therefore, the Defendants 1 to 5 in O.S.No.90 of 2008 filed Petition under Order VII, Rule 11 of CPC to reject the Plaint in O.S.No.90 of 2008. The said Petition by the Plaintiff in the Suit was dismissed after due consideration. Therefore, the legal heirs of the Plaintiff/Petitioners herein had filed Civil Revision Petition No.2974 of 2021 to strike off the plaint in O.S.No.278 of 2021. In that Civil Revision Petition, interim Order was passed on 22.12.2021, thereby, staying the proceedings in the Suit in O.S.No.278 of 2021 until further orders. The said Civil Revision Petition is still pending.

6.The "*lis pendens*" purchasers ought not to have filed impleading Petition before the trial Court. The learned Counsel for the Revision Petitioner invited the attention of this Court to the affidavit filed by the impleading party. As per the affidavit filed by the purchasers, it is found that the purchasers agreed the averments in the Plaint. They seek to



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implead as Defendants. They had not stated about the Suit filed by them in the Interlocutory Application. It is the discretion of the Plaintiff whether to implead or not? As per the Principle of *Dominus litis*, it is for the Plaintiff to choose the Defendant and seek the appropriate relief against the Defendant concerned. Impleading the purchasers themselves who are not *bona fide* purchasers and who are not protected by the Principle of "*lis pendens*" cannot claim to implead themselves as a matter of right. It is for the Court to consider whether the impleading party was a *bona fide* purchaser or not? Whether there is delay as they purchased the property in the year 2011? Whether impleaded by the Plaintiff himself? Here it is a case, where the party has purchased the property in 2021 knowing fully well that the Suit for specific performance is pending and they are affected by the "*lis pendens*". Therefore, they had taken risk upon themselves. The Plaintiff had objected under the Principle of *Dominus litis* and "*lis pendens*" to implead the subsequent purchaser themselves as party/Defendants in the Suit. In spite of vehement objection by the Plaintiff, learned Sub Judge, Pollachi had allowed I.A.No.3 of 2022 in O.S.No.90 of 2008. If this continues, the Plaintiff will not be able to get the relief as per the plaint



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avements. Further, to the whims and fancies of the subsequent purchasers, they implead themselves and create documents and mortgage etc. Thereby, complicating the issue, complicates the litigation. It is to be noted that the Plaintiff had originally settled the dues of the Duraisamy Gounder to various persons and the said Duraisamy Gounder had executed the sale agreement dated 17.01.1994 whereby possession was handed over to the Plaintiff and undertaking to effect transfer of patta. After the death of Duraisamy Gounder, sons and daughters of Duraisamy Gounder transferred the Patta in their name. Instead of executing the sale deed in favour of the Plaintiff/Nataraj, they had delayed the execution of sale deed. Instead, on the strength of Patta, they executed sale deed in favour of the third parties. Still the Plaintiff had impleaded all those with whom Defendants 2 to 4 had entered into sale deed. But that has to come to an end and it cannot go on continuously, thereby, defeating the purpose of filing the Suit by the Plaintiff who had parted with the money. Therefore, the legal heirs of the Plaintiff in O.S.No.90 of 2008 had approached this Court by filing this Civil Revision Petition under Article 227 of Constitution of India to set aside the Order dated 26.09.2022 passed by the learned Sub Judge, Pollachi in I.A.No.3 of 2022 in O.S.No.90 of 2008.



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7. The learned Counsel for the Revision Petitioners invited the attention of this Court to the schedule of property in page 65 of the typed set of papers wherein the Southern portion of the property is in enjoyment of the Plaintiff herein. The Plaintiff herein had purchased the property from Chinna Duraisamy Gounder. It is to be noted that the undertaking given by Defendants 7 and 8 had been violated by them. Undertaking is available at page 137. The objections of the District Collector is at page 139. One of the "*lis pendens*" purchaser had executed the settlement deed in favour of their sister. The Defendants 2 to 4 had filed petition to reject the plaint filed in the year 2008 which was dismissed in the year 2013. The purchasers who had impleaded themselves ought to have waited for the outcome of the suit. Without waiting for the outcome of the suit, they had filed impleading petition. The learned Counsel for the Revision Petitioners invited the attention of this Court to the petition filed by the "*lis pendens*" purchaser who is not a *bona fide* purchaser. After purchase of the property creating documents, whereby, she had filed I.A.No.634/2017 in O.S.No.173/2017. The Suit filed for recovery of money against purchaser who is not a *bona*



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bona fide purchaser of the suit property from the Defendants. He had offered the suit property as a security in O.S.No.173/2017. The suit against the "*lis pendens*" purchaser/D-11 filed I.A.No.634/2017 in O.S.No.173/2017 having executed those deeds by Defendant 11, ought not to have sold the property to the present purchasers/proposed party. The written statement filed by Defendants 7 to 9 was in the year 2019. The Suit in O.S.No.278 of 2021 was filed by the proposed Defendants/Respondents 1 and 2 herein. In that suit, the legal heirs of the Plaintiff in O.S.No.90 of 2008/Petitioners herein had been impleaded as Defendants 6 to 8. Pendency of the said Suit is suppressed in O.S.No.278 of 2021 filed by the purchasers/Respondents 1 and 2 herein. The pendency of the Suit in O.S.No.90 of 2008 is suppressed in the suit filed by the subsequent purchasers who are not the purchaser for *bona fide*. Therefore, the learned Counsel for the Revision Petitioners/legal heirs of Plaintiff in O.S.No.90 of 2008 had sought to allow this Civil Revision Petition and set aside the Order passed in I.A.No.3 of 2022 in O.S.No.90 of 2008, dated 26.09.2022.

8.The learned Senior Counsel appearing for the Proposed party/impleading party/subsequent purchaser submitted that Civil Revision



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Petition had been filed under Article 227 of Constitution of India. The Order passed by the learned Sub Judge, Pollachi is perfectly correct. As per the provisions of Code of Civil Procedure under Order I, Rule 10 and Order 22 Rule 10 of CPC, the Court has power to implead the parties to the Suit proceedings. The learned Senior Counsel for the Respondents submitted that the Suit was filed in the year 2008 for execution of a sale deed based on the sale agreement alleged to have been entered in the year 1994. The Suit as framed itself is not maintainable. The Defendants in the suit had disputed the contention of the Plaintiff in O.S.No.90 of 2008. The claim of the Plaintiff is that the Plaintiff/Nataraj settled the dues of Duraisamy Gounder and towards the same, he had sought purchase of the properties from Duraisamy Gounder through sale agreement deed, had been disputed. The persons who mentioned by the Plaintiff in the Plaint with whom Plaintiff had settled the dues are not known to the late Duraisamy Gounder/Original Defendant or to the legal heirs of the Duraisamy Gounder. Plaintiff's claim that they had not seen those persons and the name mentioned in the plaint averments by the Plaintiff/Natarajan are bogus.

9.The learned Senior Counsel for the Respondents invited the



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attention of this Court to the written statement filed by the legal heirs of late Duraisamy Gounder as Defendants 2 to 4. Copy of the written statement is enclosed with the typed set filed by the Revision Petitioners. The learned Senior Counsel also invited the attention of this Court to the plaint averments in O.S.No.90 of 2008 where the Plaintiff had not only sought relief of specific performance of contract but also sought various other reliefs which are as follows:

“ (a) directing all the Defendants or any of them who are found liable (Amended as per the Orders passed in I.A.No.58/2014, dated 12.02.2014) to execute the sale deed with respect to the property described hereunder in the schedule, pursuant to the agreement of sale dated 17.01.1994, i.e., the Suit agreement;

(b) for permanent injunction restraining the Defendants (Amended as per the Orders passed in I.A.No.58/2014 dated 12.02.2014) also Defendants 7 and 8 their men, agents and servants from in any alienating or encumbering the Suit property or to third parties, in suppression of the Suit agreement;

(c) for permanent injunction restraining the Defendants (Amended as per the Orders passed in I.A.No.58/2014 dated 12.02.2014) also Defendants 7 and 8 their men, agents and servants from in any way interfering with the peaceful possession and enjoyment of the Suit property by the Plaintiff;

(d) In the alternative, directing the Defendants 1 to 5 to refund the sum of Rs.1,12,000/- with interest @ 12% per annum



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from the date of Suit up to realisation. (Amended as per the Orders passed in I.A.No.37/2012 dated 14.06.2012).

(e) Declaring that the sale deed dated 30.11.2021 executed by Defendants 1 to 5 in favour of Defendants 7 to 8 and registered as Document No.11083/2011 before the Sub Registered Office, Pollachi is null and void and is not valid and binding on the Plaintiff. (Amended as per the Orders passed in I.A.No.576/2012 dated 10.09.2012).

(f) Declaring that the registered settlement deed dated 28.08.2012 executed by the 7th Defendant in favour of the 9th Defendant and registered as Doc.No.716/2012 before the Sub Registrar's Office, Pollachi as null and void and is not valid and not binding on the Plaintiff;

(g) Declaring that the registered sale deed dated 02.07.2013 executed by the Defendants 8 & 9 in favour of the 10th Defendant and registered as Doc.No.4926/2013 before the Sub Registrar's Office, Polachi as null and void and is not valid and not binding on the Plaintiff;

(h) Declaring that the registered sale deed dated 19.07.2013 executed by the 8th Defendant in favour of the 11th Defendant and registered as Doc.No.5463/2013 before the Sub Registrar's Office, Polachi as null and void and is not valid and not binding on the Plaintiff, (Amended as per the Orders passed in I.A.No.58/2014 dated 12.02.2014).

(i) Declaring that the registered mortgage deed dated 27.06.2014, under Doc.No.4802/2014, before the Sub Registrar's Office, Pollachi, having been executed by the 9th Defendant in favour of the 12th Defendant as null and void and is not valid and not binding on the Plaintiff''(Amended as per the Orders in I.A.No.436/2016 dated 08.09.2016)



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(j) directing the Defendants 1 to 5 to pay the costs of the

(k) granting such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice. (Amended as per the Orders passed in I.A.No.436/2016 dated 08.09.2016)''

10.It is also the contention of the learned Senior Counsel for the Respondents that the Plaintiff himself had amended the plaint several times impleading subsequent purchasers.

11.It is to be noted that the Plaintiff/Nataraj had purchased the property (Northern portion) from Chinna Duraisamy Gounder. After purchase of the property from Chinna Duraisamy Gounder, the Plaintiff in O.S.No.90 of 2008 had an eye to purchase the property of the elder brother which he refused, during his life time. The Plaintiff had created sale agreement deed as though Duraisamy Gounder's major children had delayed the execution proceedings. The claim of execution of the sale agreement deed, having granted for possession in favour of the Plaintiff in O.S.No.90 of 2008 immediately on execution of the sale agreement deed itself is disputed by the Defendants 2 to 4/sons and daughters of the late Duraisamy



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Gounder. When that be the case, the Plaintiff had not been granted ad-interim injunction in the Suit in O.S.No.90 of 2008 thereby, preventing the Defendants from proceedings with execution of the sale. Those circumstances have to be considered by this Court. "*Lis pendens*" does not mean a person does not have a right to purchase the property when the Suit for specific performance is pending in the Court. "*Lis pendens*" means what is available and applicable to the Defendants in the Suit for specific performance is applicable to the subsequent purchasers that does not mean subsequent purchasers cannot purchase the property or cannot conduct the proceedings. When the Plaintiff himself had impleaded the subsequent purchasers continuously from the date of filing of the suit that shows the Plaintiff has no case at all. Therefore, the Plaintiff had filed Suit for specific performance in the year 2008 whereas the sale agreement deed is of the year 1994 and added to that, the trial Court had not granted any interim injunction restraining the Defendants in the Suit from executing the sale deeds to third parties. The Plaintiff is not interested to prosecute the case. He had filed with evil intention to protract the proceedings and cause harassment to the Defendants. Also, the learned Senior Counsel for the Respondent submitted that on consideration of objections of the



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Respondents 2 to 4 in I.A.No.3 of 2022 in O.S.No.90 of 2008, I.A.No.3 of 2022 in O.S.No.90 of 2008 filed by the Respondents 1 and 2 herein seeking to implead themselves under Order I, Rule 10 of CPC was allowed by the learned Sub Judge, Pollachi as per Order dated 26.09.2022, pending Civil Revision Petition. Therefore, no purpose will be served by allowing this Civil Revision Petition setting aside the order passed by the learned Sub Judge, Pollachi.

12.The learned Senior Counsel for the Respondents submitted that as per Section 52 of Transfer of Property Act which had been quoted by the learned Judge, the finding of the learned Judge cannot be found fault with. It is the well-reasoned Order. If the Judge in the District Judiciary fails to exercise the discretion vested with him or her or exercise discretion whereby he had exceeded his/her discretion, only in such circumstances, exercising the powers of superintendence, the High Court under Article 227 of Constitution of India can interfere with the finding of the learned Judge concerned. Here, the Order of the learned Sub Judge, Pollachi is within the discretion of the learned Judge, who had passed the Orders within her discretion as per the provisions of CPC which cannot be found fault with by



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this Court. The Plaintiff has no case at all. The written statement filed by Defendants 2 to 4 was clearly stated that the Plaintiff's averments are false. Possession was not handed over to the Plaintiff. Plaintiff had not settled the dues to various third parties. The names mentioned in the plaint were not seen by the Defendants 2 to 4. Therefore, this Civil Revision Petition has no merits and is to be dismissed.

13. The learned Senior Counsel appearing for the Respondents further submitted that "*lis pendens*" purchasers are also protected by law and he/she can implead himself/herself in the Suit. Since the Defendants had created title in favour of third parties/purchasers, they are duty bound to protect their rights. When the title of the property flows from the original Defendants 2 to 4/the subsequent purchasers had to be protected from the Defendants 2 to 4. When the title and claim of the Defendants 2 to 4 had not been protected, then the impleaded party also suffers. Now, being the purchaser of the property, subsequent purchasers/proposed impleaded Defendants/Respondents 1 and 2 herein had to protect their right. It is to be noted that the suit filed by the proposed party in O.S.No.90 of 2008 restraining the Plaintiff herein/Revision Petitioners herein from interfering



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with the property was objected after they were attempted to be dispossessed by the Revision Petitioner herein.

14.The learned Senior Counsel for the Respondents had relied on the decision of the Hon'ble Supreme Court reported in **(2011) 2 SCC 772 [TGN**

Kumar -vs- State of Kerala and others] wherein it has been held as under:

“E. Constitution of India – art.227- power of high court under – approach to be followed in exercise of such power – held while it is true that power of superintendence conferred on high court under art.227 is both administrative and judicial , but such power is to be exercised sparingly and only in appropriate cases, in order to keep subordinate courts within their bounds of authority – in any event power of superintendence cannot be exercised to influence subordinate judiciary to pass any order or judgment in a particular manner – herein , high court exceeded its jurisdiction under art. 227,by laying down general directions for lower courts,regarding dispensing with personal attendance of accused of accused and personal examination of accused by court , which were inconsistent with clear language of Ss.205 and 313 CrPC – criminal procedure code,1973,Ss.205 and 313 (Paras 13,14, and 21)

13.similarly,while it is true that the power of superintendence conferred on the high court under article 227 of the constitution of India is both administrative and judicial , but such power is to be exercised sparingly and only in order to keep the subordinate courts within the bounds of their authority. in any event, the power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner.

15.Therefore, the learned Senior Counsel for the Respondents



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submitted that in the light of the Judgment of the Hon'ble Supreme Court reported in *Thomson's* case, wherein Interlocutory Application was allowed and in continuation of the same, the Plaintiff had filed a Petition to amend the Plaint and amendment also allowed by the learned Sub Judge, Pollachi. This Court can dismiss this Civil Revision Petition with a direction to the learned Sub Judge, Pollachi to dispose of the case pending from the year 2008 within a specified time on a day-to-day basis.

16.The learned Counsel for the Petitioners by way of rejoinder submitted that the judgment of the Hon'ble Supreme court relied on by the learned Senior Counsel appearing for the Respondents does not state that the Civil Court is bound to implead "*lis pendens*" purchasers. Here the case is different. The Plaintiff had impleaded subsequent purchasers, after such impleading only, with a motive to create documents and complicate the issues involved, the Defendants in the Suit had created sale deed. When the so-called purchasers are not merely "*lis pendens*" purchasers, they are not *bona fide* purchasers. Their only intention is to complicate the issue by keeping the suit pending and creating legal complications. If the arguments put forth by the learned Senior Counsel is accepted, it will open up



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floodgates whereby in the suit pending before the Civil Court the parties will be impleading thereby preventing the Civil Court from proceedings with the trial and conclude the same. It is the specific case of the Revision Petitioners/legal heirs of Plaintiff that the third party who sought to implead was not a *bona fide* purchaser and the vendor of the impleaded party/third party had given an undertaking that he will not create documents and violate it. Under those circumstances, the continuous purchase of property as "*lis pendens*" properties by various parties put to be curtailed to proceed with the trial. The contention of the learned Senior Counsel that the Plaintiff in O.S.No.90 of 2008 was not due to the Plaintiff but due to the Defendants. The Civil Revision Petition No.2974 of 2021 filed by the Revision Petitioners praying to call for the records in O.S.No.278 of 2021 on the file of the Sub Court, Pollachi and to strike off the Plaint in O.S.No.278 of 2021 filed by the Respondents 1 and 2, as clear abuse of process of law and barred by law, and to allow the above Civil Revision Petition, in which stay had been granted and that Civil Revision Petition is still pending. While so, the Order passed by the learned Sub Judge, Pollachi when there is stay of proceedings by this Court, the Interlocutory Application having been allowed amounts to violation the order of stay



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granted by this Court. Therefore, the learned Counsel for the Revision

Petitioners furnished ruling of the Hon'ble Supreme Court reported in

MANU/SC/0663/2012 [Vidur Impex and Traders Pvt. Ltd. -vs- Tosh

Apartments Pvt. Ltd.] in which the learned Counsel for the Revision

Petitioner relied on the relevant portion which is extracted hereunder:

“36. Though there is apparent conflict in the observations made in some of aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

- 1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.*
- 2. A necessary party is a person who ought to be joined as a party to the suit and in whose absence an effective decree cannot be passed by the Court.*
- 3. A proper party is a person whose presence whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*
- 4. If a person is not found to be a proper or necessary party, the Court does not have jurisdiction to order his impleadment against the wishes of the Plaintiff.*
- 5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.*
- 6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a*



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transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.

43. In the result, the appeals are dismissed. For their contumacious conduct of suppressing facts from the Calcutta High Court and thereby prolonging the litigation, the Appellants and Bhagwati Developers are saddled with cost of Rs. 5 lakhs each. the amount of cost shall be deposited by them with the Supreme Court Legal Service Committee within a period of three months.”

Therefore, he sought to allow this Civil Revision Petition and to set aside the Order passed in I.A.No.3 of 2022 in O.S.No.90 of 2008 passed by the learned Sub Judge, Pollachi dated 26.09.2022.

17.The learned Counsel for the Revision Petitioners also disputed the claim of the learned Senior Counsel appearing for the Respondents that after filing this Civil Revision Petition, the Interlocutory Application for impleading was allowed and the Plaintiff had filed petition to amend the plaint and the suit is ready to be proceeded is disputed by the learned Counsel for the Respondents stating that Order VI, Rule 17 of CPC, Petition was filed with specific words “without prejudice to the pending Civil Revision Petition”. Therefore, the submission of the learned Senior Counsel cannot at all be accepted. He prayed to allow this Petition with a direction



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to the learned Sub judge, Pollachi to proceed with the trial thereby preventing further alienation by the Defendants in the Suit.

18. On consideration of the rival submissions, it is found that interpretation of the learned Senior Counsel for the Respondents even though found acceptable and reasonable, cannot be applied to the facts and circumstances of this case. It is true that this Civil Revision Petition is filed under Article 227 of Constitution of India which specifically states that the superintendence of the District Judiciary (Subordinate Judiciary) by the High Court. The powers exercised under Article 227 of the Constitution of India can be exercised in revision by the High Court only if the Judges in the District Judiciary/trial Judge had not exercised discretion vested in them or had failed to exercise the discretion vested in them or had exercised discretion not vested in them are found acceptable and reasonable. Here, it is the case of the Plaintiff that the Plaintiff was unable to proceed with the trial due to the subsequent purchase by the third parties created by the legal heirs of the original Defendant/Duraisamy Gounder with an intention to delay the trial and complicate the issue in simple suit for specific performance by complicating and creating encumbrance in the very same



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property by the so-called purchaser for various others. For example, Defendants 10 and 11 who were impleaded by the Plaintiff had created documents in favour of Defendant-12/Zamin Kaliapuram Co-operative Societies whereby they had created mortgage of the same property. Similarly, the subsequent purchasers had filed O.S.No.278 of 2021 restraining the Defendants 6 to 8 therein (Revision Petitioners herein) from interfering within their possession for which stay had been granted.

19.The Defendants 10 and 11 who are also subsequent purchaser/"lis pendens" purchaser had given the Suit property as a security in the Suit for money wherein that purchasers were Defendants 4 and 5 in O.S.No.278 of 2021. Therefore, as per the submission of the learned Counsel for the Revision Petitioners and the original Plaintiff, when the original Plaintiff had claimed in the Plaint that he had settled the dues of the Duraisamy Gounder. After settling the dues, he had entered into the sale agreement wherein he had paid Rs.90,000/- in the year 1994 for purchase of 6 Acres and 60 cents. Total amount parted by original Plaintiff/Nataraj was a huge amount in the year 1994. Therefore, with the *bona fide* intention, the original Defendant/Duraisamy Gounder had handed over possession of the



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property to the Plaintiff/Nataraj. The sons and daughters of Duraisamy Gounder, who are impleaded as Defendants 2 to 4, who had been witnesses to the sale agreement deed were major on the date of the sale agreement deed, had delayed execution of the sale deed, after the death of Duraisamy Gounder on the ground that they had to get patta transfer from the deceased Duraisamy Gounder to the name of legal heirs of Duraisamy Gounder. The Plaintiff expecting such name transfer was waiting patiently. Instead of executing the sale deed in favour of the Plaintiff, after the transfer of patta in the name of the legal heirs of Duraisamy Gounder/Defendants, the sons and daughters of the Duraisamy Gounder had executed the sale deed to Defendants 2 to 4. Therefore, the Plaintiff was forced to raise objections with the District Collector, Coimbatore. Accordingly, District Collector, Coimbatore had passed Orders that the transfer of Patta will be subject to the result of the Suit. Also, the purchasers who had been impleaded as Defendants 7 and 8 in the Suit, subsequent to filing of the Suit by the Plaintiff on the ground of Patta transfer had given undertaking before the Court that they will not effect further transfer. They had violated that undertaking given to the Court. On such violation also, the Plaintiff had amended the plaint by impleading those purchasers. The subsequent



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purchasers Defendants 10 and 11 had created documents by giving the property as security in another Suit. Again, another purchasers had after purchase of the property, during the pendency of this Suit in O.S.No.90 of 2008, "*lis pendens*" purchasers had filed another Suit in O.S.No.278 of 2021 against the Defendants therein seeking declaration that the sale agreement deed dated 17.01.1994 is to be declared as null and void and suppressing the fact that the Suit is pending before this Court. Again another Suit is filed by another purchaser and from the year 2008, the purchasers of the property in the "*lis pendens*" had been protracting the proceedings on behalf of the Defendants 1 to 4. This part of the circumstances were not taken into consideration by the learned Sub Judge, Pollachi while exercising discretion in disposing of I.A.3 of 2022 in O.S.No.90 of 2008. These are all found from the records available to the learned Judges. Still, the learned Judge magnanimously ignored the objections raised by the Plaintiff who had been waiting for the disposal of the Suit and waiting for the decree. The Civil Court has vast powers to draw interference from the circumstances and the records available before the Court. The learned Judge failed to observe those circumstances which warranted the Plaintiff from proceedings with the trial.



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20. The Original Defendants 2 to 4 were within their powers to file the written statement disputing the plaint averments. Only when the Plaintiff proceeds with the trial, the Defendants will be bound to prove their contention in the written statement and the contents of the Plaint and the written statement will be put to test during the course of trial. Only when the trial concludes, either the Suit fails or the suit is decreed, the Plaintiff having approached the Court and paid Court fees, patiently waiting for the Courts to dispose the Suit, the Suit having been prolonged due to the conduct of the original Defendants 2 to 4, which were not considered by the learned Sub Judge, Pollachi, is the cause of this Revision Petition, if the impleading parties/subsequent purchaser are impleaded continuously, then the Principle of "lis pendens" is lost. What had been contended in the written statement filed by the Defendants 2 to 4/legal heirs of Duraisamy Gounder holds good for the subsequent purchasers. They cannot claim the title. Therefore, it is unnecessary exercise to implead them. The submission by the learned Senior Counsel that the Plaintiff himself had impleaded Defendants 2 to 4 and they were not granted an injunction forbearing the Defendants 2 to 4 from further alienating the properties or creating



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encumbrance is to be considered by this Court. Therefore, Plaintiff himself is not interest in prosecuting the case cannot at all be accepted in the facts and circumstances of this case. It is true that the Plaintiff had impleaded earlier purchasers. But the Plaintiff had vehemently objected to impleading Respondents 1 and 2/purchasers of the “*lis pendens*” property ignoring the undertaking given by the earlier purchasers of the *lis* pending Suit to the Court. Therefore, it had to be put an end to. The reliance placed by the learned Senior Counsel for the Respondent reported in **(2011) 2 SCC 772 [TGN Kumar -vs- State of Kerala and others]** is true in other aspects. But in the facts of this particular case, if the ratio is applied, then particular Suit cannot at all be taken for trial in the near future. Under those circumstances, the reliance placed by the learned Counsel for the Petitioners in **MANU/SC/0663/2012 [Vidur Impex and Traders Pvt. Ltd. -vs- Tosh Apartments Pvt. Ltd.]** is accepted. In the light of those circumstances, the submission of the learned Senior Counsel for the Respondents that Defendant 11 having purchased the property and having protected his interest, the vendor of Defendant 11 does not have any interest to prosecute and if the case is decided in his absence, the valuable right of Defendant 11



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is lost. Therefore, the Order passed by the learned Judge under Order 1 Rule 10 and Order 22 Rule 10 of CPC and Section 52 of Transfer of Property Act is well-reasoned. Therefore, it cannot at all be accepted in the above circumstances that the learned Judge failed to appreciate the facts that the Defendants 2 to 4/original Defendants having stoutly denied that the averments in the Plaint that the Plaintiff had been indulging in sale of property through documents during the pendency of the *lis* thereby, preventing the Plaintiff from prosecuting the case and those purchasers creating further documents and thereby, defeating the purpose of filing the Suit, that is the reason for interference of this Court under Article 227 of Constitution of India attracting the powers vested in the learned Judge to exercise discretion judiciously was lost sight by the learned Judge. Therefore, this action of the learned Judge warrants interference by this Court. The Respondent having purchased the property knowing fully well that the property is under *lis*, has to bear the risk. Also, it is to be noted that in all the sale deeds, the vendors of the property undertakes to indemnify the purchaser from any proceedings or encumbrance causing loss to the purchaser. Therefore, the vendor of Defendant 11 has to necessarily compensate for any loss suffered by Defendant 11. Thereby, Defendant 11



is protected. In the light of the above discussion, the rulings placed by the learned Senior Counsel is not applicable to the facts of this case which is distinguished. The reliance placed by the learned Counsel for the Revision Petitioner is applicable to the facts of this case.

In the light of the above discussion, **this Civil Revision Petition is allowed.** The Order passed by the learned Sub Judge, Pollachi, in I.A.No.3 of 2022 in O.S.No.90 of 2008 (under Order 1 Rule 10 of CPC filed by the third Party to the lis who are the subsequent purchasers who as per the Plaintiff is not a bona fide purchasers) by allowing the said I.A.No.3 of 2022 filed by the third party to implead themselves is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

.04.2023

DH

Index : Yes / No

Internet : Yes / No

To

1.The Sub Judge,
Pollachi.

2.The Section Officer,



V.R.Section,
High Court,
Madras.

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SATHI KUMAR SUKUMARA KURUP., J.

DH

**Pre-Delivery Order made in
C.R.P.No.3668 of 2022**

.04.2023