



CMP(MD). No.8481 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Friday, the Twenty Second day of September Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CMP(MD). No.8481 of 2023
in
SA(MD) No.4 of 2021

Shri Varalakshmi
Sago Foods Private Limited Represented by
its Authorized Signatory Mr.R.Sundaram
Sri Varalakshmi Divyaa Tower
320,Vivekananda Street New Fairlands,
Salem - 636 016

... Petitioner/ Proposed 2nd Appellant

Vs

1 M/s.Leither Shiram Manufacturing Limited
Through its Managing Director
Having Their Registered Office at
No.5 T.V. Street Chetpat
Chennai -31.

... 1st Respondent/Appellant

2 Esakki Mudaliar

3 Tamil Nadu Power Generation
And Distribution Corporation
Annasalai Through its Chairman.

4 Tamil Nadu Power Generation
and Distribution Corporation Windmill
Power Farm Development Projects



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Thiagaraja Nagar
Palayankottai Taluk
Tirunelveli District
Through Its Superintending Engineer.

5 Tamil Nadu Power Generation
and Distribution Corporation Windmill Power
Generation and Farm Development Projects
Thigaraja Nagar Palayankottai Taluk
Tirunelveli District.
Through its superintending Engineer.

6 M/s.RRP Infra Projector LTD.,
P and C Towers 3rd Floor
No.140, Perundurai Road
Erode Through its Managing Director.

... RespondentS 2 TO 6/Respondent 1 to 5

Prayer in CMP(MD). No.8481 of 2023

Civil Miscellaneous Petition filed under order I Rule 10(2) of CPC To implead the petitioner company herein as the 2nd appellant in the above second appeal and pass such further of other orders as this Hon`ble Court may deem fit in the circumstances of the case, and thus render justice.

Prayer in SA(MD) No.4 of 2021

Second Appeal filed under Section 100 of C.P.C., to set aside the decree and judgment passed in Appeal Suit No.3 of 2015 dated 04.10.2019 on the file of the



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Principal Subordinate Judge, Tenkasi as against the judgment and decree passed in Original Suit No. 55 of 2012 dated 15.10.2014 on the file of the Additional District Munsif, Tenkasi.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.S.Kumaraguru Advocate for the Petitioner and of Mr.D.P.R.Sundararaj Advocate for the 1st Respondent and of Mr.A.Sivaji Advocate for the 2nd Respondent and of Mr.B.Ramanathan, Senior Counsel for the 3rd to 5th Respondents and 6th Respondent is not appearing either in person or by an Advocate this Court made the following order:

This Civil Miscellaneous Petition is filed by the petitioner to implead the petitioner company as 2nd appellant in the Second Appeal.

2.The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition are follows:

The petitioner company has purchased the property measuring eastern 2.50 acres out of larger extent of 6.05 acres comprised in S.F.No.159/2A,

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Veerakeralampudur Village and Taluk, Tirunelveli District through registered Sale Deed dated 18.02.2015 from by the 6th respondent. The 6th respondent purchased the said property from the first respondent. There is a Wind Mill in the property. The petitioner company is in absolute possession and enjoyment of the property for the past 8 years by running the Wind Mill. The Wind Mill got repaired on 23.05.2023. The petitioner company arranged for repair work with M/s.Renom Energy Services Pvt. Ltd., Company and placed work order dated 26.05.2023. The employees of the said company along with their utensils came to the property to do repair works. They were prevented by the second respondent and his henchmen, who informed that the land is involved in a litigation and the second respondent succeeded and the second respondent is the owner of the said property. The petitioner company made enquiry about the litigation. The petitioner came to know that the second respondent filed a suit in O.S.No.55 of 2012 before the Additional District Munsif Court, Tenkasi against the other respondents for declaration of title of property and permanent injunction and also for mandatory injunction to remove the Wind Mill. The suit was dismissed on 15.10.2014. The second respondent preferred the appeal in A.S.No.3 of 2015 before the Principal Sub Court, Tenkasi. The said appeal was partly allowed. Aggrieved by the judgment and decree of the I Appellate Court, the first respondent alone preferred this Second Appeal. The

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petitioner's vendor namely the 6th respondent has not accompanied the first respondent in filing the Second Appeal. The petitioner company has to lose its valuable property and business, because the seller/6th respondent remained ex-parte. The petitioner company apprehends that the first respondent cannot be expected to conduct the case sincerely as it has nothing to lose if the Second Appeal is dismissed. Therefore, the petitioner company is a necessary party and it ought to be impleaded in this appeal for effective and proper adjudication of the Second Appeal. The petitioner company is in possession and enjoyment of the property for the last 8 years and it has not been disturbed all these years. If the Second Appeal is heard and disposed without hearing the petitioner, the petitioner company will be ultimate loser as it heavily invested in the land and Wind Mill. Therefore, the petitioner company is a necessary party to the Second Appeal and it may be impleaded as second appellant. Hence, this Civil Miscellaneous Petition is filed.

3. The second respondent filed counter and objected the petition and stated as follows:

The averments of the petitioner in affidavit are all denied as false. The petitioner company has not filed any supporting documents to prove its claim. The

first first respondent filed C.M.P.No.20 of 2021 in the Second Appeal that he is in

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possession of the property. Now, the petitioner company stated in its affidavit that it is in possession of the property. There is no records made available to sustain the plea of the petitioner that the petitioner is in possession of the property for 8 years. It is a collusive action. The petitioner was set up by his vendor. The petitioner already filed the petition in E.A...in E.P.No.85 of 2020 in O.S.No.55 of 2012 for the very same relief and the copy of petition was served to this respondent's counsel on 07.07.2022. Now, the petitioner has suppressed these facts and filed this petition during 1st week of July 2023, which shows the collusive action of the petitioner and the first respondent. The first respondent moved the petition in C.P./IB./25/CHE/2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the NCLT, Chennai, wherein Interim Resolution Professional was appointed by order dated 14.10.2022 in Writ Appeal in WA(MD)No.418 of 2013 filed in W.P.No.3189 of 013 the petitioner was permitted to withdraw Rs.3 lakhs deposited by the writ appellant/the 1st respondent herein. The petitioner is trying to build up a new case as if it came to know about the litigation only during May 2023 and till then the Wind Mill was in operation. In the earlier proceedings before this Court as well as before the NCLT would show that the sale relied on by the petitioner was not acted upon. If any right is available to the petitioner, it has to work out against his vendor and not against this respondent. The action and inaction of the petitioner company



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is not a ground to implead the petitioner in the Second Appeal, since the petitioner purchased after the suit was filed. The petitioner is not a proper party to this Second Appeal. The petitioner admitted that it purchased the disputed property and he is aware of the dispute, while so, the petitioner ought to have taken steps to implead in A.S.No.3 of 2015, but it failed to do so. If really, the petitioner invested huge sum, he would not allow the first respondent to deal with the property. Even hearing of this appeal, the first respondent represented himself as owner of the property. The petitioner was not in absolute possession and enjoyment of the suit land at any point of time. Since the first respondent cannot achieve his ill acts, he has instigated the petitioner to harass this respondent. If the petitioner is allowed to erect the Wind Mill and get functional, it would cause aerial encroachment into this respondent's property which is not permissible in law. The petition is not maintainable and therefore, the petition is liable to be dismissed.

4. The learned counsel for the petitioner has submitted that the petitioner is a bona-fide purchaser of the land with Wind Mill in question from the 6th respondent by virtue of registered Sale Deed dated 18.02.2015 and the petitioner has been in possession of the same from 18.02.2015 onwards. The petitioner company is a registered company and is running Wind Mill from 2015. The petitioner has

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obtained electricity connection in its name and has also GST number. The petitioner has not purchased the land in question during pending suit. The Wind Mill got repaired, the petitioner placed work order to the M/s.Renom Energy Services Pvt. Ltd. When the employees of service company entered into land for servicing the wind mill, they were prevented by the second respondent. Then they came to know about the suit in O.S.No.55 of 2012 filed by the second respondent was dismissed on 15.10.2014. The petitioner purchased the land on 18.02.2015. Thereafter only the second respondent preferred the appeal in A.S.No.3 of 2015 and partly decreed in his favour. The first respondent preferred this second appeal. The second respondent has not objected the petitioner, who is running Wind Mill from 2015. The petitioner is a proper and necessary party to the Second Appeal. The petitioner is a bona-fide purchaser that too it has not purchased the property during pendency of the suit. The sale transaction was done after dismissal of the suit in O.S.No.55 of 2012. Even for the sake argument, the petitioner purchased during pendent lite, the cause of action for the second respondent would not get changed except the sale transaction. So, the petitioner may be allowed to be impleaded in the Second Appeal. In support of his arguments the petitioner's counsel has relied on the following citations:

1. 2005(4) CTC 47 (Amit kumar shaw and Anr. /v/ Farida Khatoon and Anr.)



wherein it is held in paragraph Nos.14 and 16 as follows:

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“14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1, Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But, the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral....”

2. 2009(1) CTC 775 (V.Ravimenon /v/ R.Ebinessar), wherein it is held in paragraph No.13 as follows:



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“13. I respectfully follow the decision rendered by the Larger Bench of the Hon’ble Supreme Court in Savitri Devi’s case cited supra and hold that the impleadment of second respondent in the suit as second plaintiff is essential. It cannot be stated that the cause of action will change. Whatever rights the first respondent was possessing were delivered by the second respondent and the cause of action as on the date of sale alone will get introduced in the plaint and such fact would no way prejudice the rights of the petitioner.”

3. 2014(4) CTC 814 (V.L.Dhandapani and Ors /v/ Revathy Ramachandran and Ors), wherein it is held in paragraph No.12 as follows:

“12...In spite of the prohibitory order passed, there was an alienation by a party to the suit. Even though the purchaser could not be termed as a bona-fide purchaser, the Supreme Court, after considering the scope and ambit of section 52 of Transfer of Property Act, 1882 and Order 1 Rule 10 of the Civil Procedure Code and Section 19(b) of the



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Specific Relief Act, 1963, allowed the application for impleadment sought for.”

5. Per contra, the learned counsel for the second respondent has mainly contended that the petitioner and other respondents 1 and 6 colluded with each other and in order to harass the second respondent, who is an agriculturist, the petitioner has filed this petition. The second respondent filed the suit in O.S.No.55 of 2012, though the suit was dismissed, he succeeded in the appeal in A.S.No.3 of 2015 and decree was passed in his favour and directed the defendants 1 and 5 to remove and dismantle the Wind Mill erected in the suit property. The second respondent proceeded to execute the decree and filed E.P.No.85 of 2020 in O.S.No.55 of 2012 on the file of the Addition District Munsif Court, Tenkasi. The respondents 1 and 6 were set ex-parte in E.P.No.85 of 2020. The petitioner has filed the petition dated 07.07.2022 to implead it as a party to the executing proceedings. So, the petitioner has suppressed the above facts and falsely stated that the petitioner came to know the suit proceedings on 01.06.2023 while the employees of service company entered into the suit property to do repair the Wind Mill. The petitioner with knowledge of the suit proceedings alleged purchase of the property during pendency of the suit in order to get subsidy from the government. The petitioner's vendor namely the 6th



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respondent has not preferred any Second Appeal. Only the first respondent has preferred the Second Appeal. The petitioner has played fraud and so, the petitioner has no valid reason to implead as party in this Second Appeal and therefore, the petition may be dismissed.

6.The learned counsel for the first respondent and the learned counsel for the respondents 3 to 5 submitted that they have no objection in allowing this petition.

7.Heard both sides and perused the records in this Civil Miscellaneous Petition.

8.On hearing both, it is clear that the second respondent filed the main suit in O.S.No.55 of 2012 before the Additional District Munsif Court, Tenkasi seeking for declaration that the suit property belongs to the second respondent and for mandatory injunction to remove the electric posts and wind mill erected by the defendants 1 and 5 in the suit 2nd schedule property. After hearing both the Trial Court dismissed the suit on 15.10.2014. Then the second respondent preferred the appeal in A.S.No.3 of 2015 before the Principal Sub Court, Tenkasi and succeeded in appeal on 04.10.2019. After that, the first respondent preferred the Second Appeal in



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S.A.(MD)No.4 of 2021 before this Court and the same pending.

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9. At this stage, the petitioner has filed this petition to implead the petitioner Company as second appellant in the Second Appeal. The petitioner averred in the affidavit that the petitioner purchased the said property with Wind Mill from the 6th respondent by virtue registered Sale Deed dated 18.02.2015 and is running the Wind Mill for the past 8 years and that when the Wind Mill got disorder, at placing order of the petitioner the service company employees entered into the property. Coming to know this the second respondent prevented them stating that he is owner of the property as per decree passed by the court of law. The petitioner claims that she did not know the suit proceedings and on enquiry she came to know about the suit in O.S.No.55 of 2012 filed by the second respondent was dismissed on 15.10.2014 and thereafter the second respondent obtained decree in A.S.No.3 of 2015. It is the case of the petitioner that the petitioner purchased the property after advancing huge sale consideration and also running Wind Mill by expending huge sum and she needs to be impleaded as party to the Second Appeal. The second respondent has contended that the petitioner well aware of the property is in litigation in the month of July 2022 even prior to the filing of this petition as the petitioner earlier filed unnumbered E.A...in E.P.No.85 of 2020 filed by the second respondent and hence,



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dismissed.

the petitioner has stated false averments and therefore, the petition may be dismissed.

10.Both parties made rival claims by arguing at length. In this petition it is to be decided that whether the petitioner can be impleaded in this Second Appeal or not. The other arguments relating other aspects will be decided in the main Second Appeal. It is admitted that the petitioner purchased the property in question from the 6th respondent during the pendency of suit proceedings. Initially the suit in O.S.No.55 of 2014 filed by the second respondent was dismissed on 15.10.2014. The petitioner purchased the property on 18.02.2015. On perusal of records, it reveal that the second respondent preferred the appeal in A.S.No.3 of 2015 before the Sub Court, Tenkasi on 05.01.2015. Therefore, it is clear that during pendente lite the petitioner purchased the property. It is settled principle of law that the subsequent purchaser during pendency of the suit is bound by the decree reached finality in the suit. On careful consideration of the rulings relied on by the petitioner side, it is clear that the transferee pending suit can be added as a proper party if his interest in the subject matter of the suit is substantial. Following the decision of the Hon'ble Supreme Court in Savitri Devi's case, this Court already held that the alienee pendente lite is necessary party to the suit. Further, the Hon'ble Supreme Court held



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that in spite of prohibitory order passed, there is an alienation by a party to the suit, though he/she could not be termed as a bona fide purchaser, the impleadment sought for by the alienee be allowed. In the case on hand, the petitioner states that she purchased the property by paying huge sale consideration and also running Wind Mill by incurring huge expenditure and as the Wind Mill got repaired the petitioner is facing loss in huge sum. The petitioner further states that she is running the Wind Mill for the past 8 years by producing Tax, Electricity bill and GST receipts. Mere impleading the petitioner in the Second Appeal, there will be no prejudice to the second respondent as there would not change in cause of action except the date of sale transaction made by the petitioner with the 6th respondent. Each and every party shall be given an opportunity to substantiate his/her case. Considering the above facts and circumstances, the petitioner can be added as a party to this Second Appeal since the interest of the petitioner in the property in question is substantial. Therefore, this Court is inclined to allow this petition.

11. In the result, this Civil Miscellaneous Petition is allowed and the petitioner is ordered to be impleaded as second appellant in this Second Appeal. No costs.



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12.The Registry is directed to carry out necessary amendment in the grounds of appeal and list the Second Appeal on 10.10.2023.

Sd/-

Assistant Registrar(C.O)

// True Copy //

/12/2023

Sub Assistant Registrar(CS)

TO

+ 1 cc to Mr.A.Sivaji Advocate CD SR No.14116 of 2023

ORDER DATED : 22/09/2023

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For CD Purpose

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in

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Giving direction and etc.
as stated within.



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PA (11.12.2023) 17P/ C

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.