C.M.P.No.10535 of 2023 & 3520 of 2024
in S.A.No.609 of 2019

P.B.BALAJI,J.

These Civil Miscellaneous Petitions have been filed to implead 16th and 17th respondents.

2. It is the case of the petitioner/appellant that pending the Second Appeal, the 15th respondent-M/s.Rock Lines Farms and Resorts Pvt Ltd., was impleaded as a purchaser from the 2nd respondent-Mr.Sivashanmugam and by way of counter affidavit, it has been brought to the notice of the petitioner/appellant that the 16th respondent has become owner of the subject property, in and by an order of NCLT proceedings and the 16th respondent purchaser has transferred its assets and liabilities to the 17th respondent. Therefore, in order to have effective adjudication, the petitioner seeks impleadment of the 16th and 17th respondents.

3. The Learned Counsel appearing for the 16th and 17th respondents would state that a detailed counter affidavit has been filed and the appellant is aware even in 2005 that the property was sold by the 2nd respondent and having slept over the matter for several years, it is not open to the petitioner to seek impleading of the present owners. He would also refer to the decision of the

Hon'ble Supreme Court in ***A.Ramachandra Pillai -vs- Valliammal (died)*** reported in ***Volume 100 L.W. 486.***

4. The Learned Counsel for the respondents would however submit that the 2nd respondent having sold the property, may not be interested in protecting the interest of the present owner of the property and more over, he may collude with his family members and defeat the rights of the present owner of the property.

5. Admittedly, the suit is for partition. Even though, the Trial Court has taken note of the objection that the 15th respondent ought to have been impleaded as a defendant even before the trial Court and also held that the suit was bad for non-joinder of necessary parties.

6. From a reading of the plaint, as well as in the written statement, I do not find that specific particulars of the person who is the proper and necessary party have been indicated anywhere in the plaint. Even in the written statement, excepting for a statement that the property has been sold, there are no other particulars of the purchaser or the sale deed under which the purchaser became the owner of the property. In any event, subsequently the suit has been dismissed and the First Appeal was also dismissed and now, the plaintiff is before this Court. In and by C.M.P.No.557 of 2020, the 15th respondent, namely M/s.Rock Lines Farms and Resorts Pvt Ltd., has been impleaded in the Second Appeal, by an order of this Court dated 10.03.2023.

7. It is now stated by the petitioner/appellant that the 16th respondent has purchased the property, pending the Second Appeal from the 15th respondent and thereafter, the 17th respondent, in and by an order of the NCLT has taken over the assets including the suit property from the 16th respondent. Having allowed the 15th respondent to be impleaded, I see no reason why the 16th & 17th respondents should not be impleaded in the present Second Appeal. In fact, it would be in the interests of the 16th and 17th respondents to be parties at the time of final hearing of the Second Appeal so that, their interests are adequately protected and in fact, the apprehension of the Learned Counsel for the respondents that the 2nd respondent may collude or not effectively defend the appeal are all issues that can be taken care of, if the present owner, namely the 17th respondent is brought on record. Therefore, I feel that the applications are to be ordered, in the interests of justice and impleading the 16th respondent and the 17th respondent who has became the present owner in view of NCLT proceedings and they would be proper and necessary parties in the Second

Appeal. Accordingly, the C.M.P.Nos.10535 of 2023 and 3520 of 2024 are allowed.

05.03.2024

bsm

Note: Registry is directed to carry out necessary amendment in the cause title.
Post this matter on 12.03.2024 for filing hearing.

P.B.BALAJI,J.

bsm

C.M.P.Nos.10535 of 2023 & 3520 of 2024
in S.A.No.609 of 2019

05.03.2024