

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 01.08.2025

Order pronounced on : 22.08.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.1957 of 2025
& CMP.No.11192 of 2025

1.R.Sundararajan
2.Sundar Ganesh
3.Meenakshi Sundaram

..Petitioners

Vs.

1.U.Parthan
2.Rev.Dr.Kurien Thomas
President and Director of Asha Nivas Social Welfare Centre,
Registration No.146 of 1976,
Door No.9, Rutland Gate IV Street,
Chennai – 600 006.

..Respondents

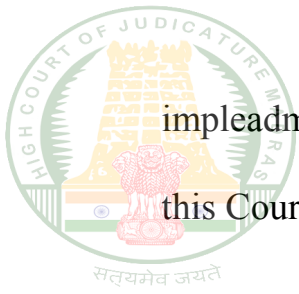
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 10.07.2024 in I.A.No.03 of 2023 in O.S.No.2422 of 2021 on the file of the XVI Additional City Civil Court, Chennai.

For Petitioners : Mr.V.Raghavachari
Senior Counsel
for Mr.Avinash Wadhwani

For Respondents : Mr.P.Sesubalan Raja
for M/s.ASN.Atthik Legal Solutions for R1
No appearance for R2

ORDER

The plaintiffs in O.S.No.2422 of 2021 on the file of the XVI Additional City Civil Court, Chennai, aggrieved by the order in I.A.No.3 of 2023, directing



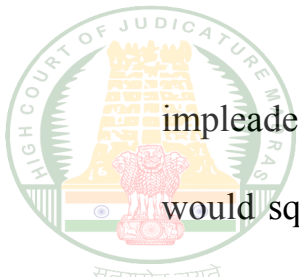
impleadment of the 1st respondent herein as a defendant in the suit, are come
this Court by way of this revision.

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2.I have heard Mr.VRaghavachari, learned Senior Counsel for Mr.Avinash Wadhwani, learned counsel for the petitioners and Mr.Sesubalan Raja, learned counsel for M/s.ASN.Atthik Legal Solutions, counsel for the 1st respondent.

3.Mr.V.Raghavachari, learned Senior Counsel for the petitioners would contend that in a suit is for declaration and recovery of possession against the 2nd respondent herein, the 1st respondent herein sought to implead himself and the Trial Court has erroneously entertained the said application, without application of mind to the specific facts and circumstances of the case. He would further state that even according to the 1st respondent, he is not a registered owner of the suit property and he approached the Court only on the premise that he holds a valid Power of Attorney and that he was put in possession of the suit property and has the original documents and title in his custody.

4.The learned Senior Counsel for the petitioners would further state that all these transactions, based on which the 1st respondent claims to be



impleaded, were all pending suit and therefore, the doctrine of *lis pendens* ...

would squarely apply and the 1st respondent was not required to be arrayed as defendant in the said suit. He would further state that the 1st respondent is neither a proper nor necessary party and consequently, under Order I Rule 10 of CPC, the Court should not have added the 1st respondent as a party defendant in the said suit. The learned Senior Counsel for the petitioners would rely on the deposition of D.W.1, who is the 2nd respondent's authorized representative in the said suit and also e-Courts status regarding the manner in which the proceedings have been protracted by the respondents. He would therefore pray for the revision being allowed.

5.Per contra, Mr.P.Sesubalan Raja, learned counsel for the contesting 1st respondent would state that the 1st respondent's father had paid the entire sale consideration and purchased the property from the 2nd respondent. According to the learned counsel, the father of the 1st respondent was put in possession of the suit property and even his legal heirs, post his demise, have been in possession of the suit property. The grievance of the 1st respondent as ventilated by the learned counsel is that, the suit has been filed for recovery of possession and when the 1st respondent is in possession, it is all the more reason that a fair opportunity was given to the 1st respondent to defend the suit. He would also state that the father of the 1st respondent died intestate and there was a partition



amongst his family members and a suit for partition was also filed, in which the final decree came to be passed in C.S.No.314 of 2019, in and whereby, the suit property has been allotted to the share of the 1st respondent.

6.It is therefore contended by the learned counsel for the 1st respondent that the 1st respondent has to be arrayed as one of the defendants in the said suit. He also refers to a letter dated 30.06.2015 executed by Rev.Dr.Kurien Thomas, representing the 2nd respondent, where the 1st respondent's father has been put on notice about the suit before the High Court coming up for hearing on 01.07.2015 and in view of the fact that the property has been sold to the 1st respondent's father, it was his duty to safeguard the property. The learned counsel for the 1st respondent would therefore state that the 2nd respondent would not protect the interest of the 1st respondent and there is also likelihood of the 1st respondent remaining casual about the suit, which would seriously prejudice the interest of the 1st respondent. In this regard, he would invite my attention to the proof affidavit filed by D.W.1 in the suit, where absolutely not a single document has been exhibited on the side of the defendants, excepting for oral evidence being adduced.

7.The learned counsel for the 1st respondent would also state that the trial Court was right in allowing the application for impleading and the same does



not warrant interference in this revision. In support of his contentions, 1

learned counsel for the respondents would place reliance on the following decisions:

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1.V.L.Dhandapani and Others Vs. Revathy Ramachandran and Others (2015 2 CirCC 122).

2.A.Nawab John and Others Vs. V.N.Subramaniam (2012 Supreme SC 425).

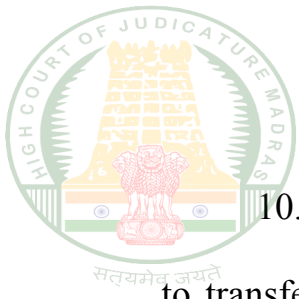
3.Suraj Lamp and Industries Pvt., Ltd., Vs. State of Haryana and Another (2011 (6) Supreme 737).

4.Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others ((1992) 2 SCC 524).

8.I have carefully considered the submissions advanced by the learned

Senior Counsel for the petitioners and the learned counsel for the respondent.

9.The suit in O.S.No.2422 of 2021 was initially filed for the relief of declaration of title and for recovery of possession before this Court in C.S.No.867 of 2002. In the said suit, the revision petitioners have sought for the relief against Rev.Dr.Kurien Thomas, who was the President and Director of Asha Nivas Social Welfare Centre. The suit has been filed to declare the sale deeds executed in favour of Rev.Dr.Kurien Thomas as null and void and not binding on the plaintiffs and for consequential reliefs of recovery of possession, damages for use and occupation and permanent injunction to restrain the said defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the Schedule 'B' mentioned property.



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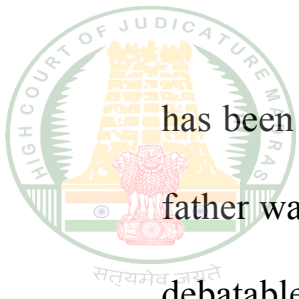
10. The suit is being contested by the sole defendant and even subsequent to transfer the suit to the file of the City Civil Court, Chennai, owing to the enhancement of pecuniary jurisdiction of the Civil Courts. One Shanthi, W/o Alexander, has chosen to examine herself as D.W.1. She has no doubt filed a proof affidavit, without placing reliance on any documentary evidence, excepting Ex.D1, authorization empowering her to adduce evidence in the suit. However, in cross examination of D.W.1 on two occasions, namely 16.02.2023 and 09.03.2023, several questions have been put to D.W.1, touching the transactions in favour of the defendant's title and possession of the property and it has not been the case of D.W.1 that the property had already been sold to the 1st respondent and that the 2nd respondent is no longer a proper and necessary party. On the contrary, it is clear from the stand taken in the proof affidavit as well as cross examination that the defendant continues to defend the suit and it is not even attempted to be brought to the notice of the Court that the property has been sold to the 1st respondent. In this context, the documents, under which the 1st respondent claims right, assumes significance. Only a Power of Attorney was executed, that too, in favour of one D.Ragupathy and the sale agreement with the father of the 1st respondent are relied on. The 1st respondent admittedly died and the sale agreement between the 1st respondent's father and the 2nd respondent never proceeded to take the shape of a registered conveyance deed.



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11. However, it is the claim of the 1st respondent that the entire sale consideration has been paid, original documents of title have been handed over to the father of the 1st respondent and for all practical purposes, excepting for a registered sale deed in his favour, title came to be vested with the 1st respondent's father and that is the reason why the suit property was also subject matter of the decree for partition before this Court in C.S.No.314 of 2019. However, strangely, it is not known how the 1st respondent had approached the police authorities, after effecting paper publication that the original documents of title had been misplaced and on 03.10.2003, the Sub-Inspector of Police, F4-Police Station, Thousand Lights, has issued a certificate that the original documents are missing and are not traceable, despite attempts to trace the same having ended in vain. However, under the agreement of sale dated 30.08.2003 with the father of the 1st respondent, it can be seen that the original documents have been handed over to the father of the 1st respondent. I also find specific averments in the agreement of sale that possession of the property has not been handed over to the purchaser in the registered agreement of sale in Doc.No.4931 of 2003 on the file of the SRO, Purasaiwalkam.

12. In the light of the specific covenants in the agreement of sale, the version now advanced by the 1st respondent, that the original documents of title



has been handed over to the 1st respondent's father and that the 1st responder

father was also put in possession of the property in a lawful manner, are clearly debatable and suspicious. In any event, as on date, admittedly the 1st respondent has no title. There is no registered conveyance deed or transfer of title in favour of either the 1st respondent's father or the 1st respondent. Therefore, at best, the 1st respondent claiming under his father and in view of the final decree passed, allotting the property in his favour, even if it has any legal effect, would only render the 1st respondent as a mere agreement-holder in respect of the suit property. Therefore, the 1st respondent cannot claim to have any right, title or interest vested in him, except for a right to pursue the remedy available to the agreement holder, subject to any such remedy being well within the statutory period of limitation.

13. In the light of the said position, the 1st respondent cannot have any say in the present suit for declaration of title and for recovery of possession from the 2nd respondent. Further, as already seen above, it is not even the case of the 2nd respondent that the property has been sold. As already stated there has been elaborate cross examination of D.W.1 as well. On a reading of the evidence of D.W.1, I am unable to see any case of collusion between the 2nd respondent and the plaintiff. In fact, as seen from the e-Courts status of the suit as well, the suit has been pending from 2002 onwards and right from March 2021, when the suit



was transferred from the High Court and assigned O.S.No.2422 of 2021, 1

Trial Court has taken up trial as early as in December 2021 and after being cross examined on two occasions, D.W.1's further cross examination has also been posted to February 2023 and adjourned for the very same purpose, during which point of time, the impleading application has been taken out. The Trial Court, on an erroneous consideration of the position of law, has proceeded to hold that the 1st respondent is a proper and necessary party to adjudicate the issues that arise for consideration.

14.Coming to the decisions that have been relied on by the learned counsel for the 1st respondent, in *A.Nawab John's case*, the Hon'ble Supreme Court, referring to doctrine of *lis pendens* enumerated under Section 52 of the Transfer of Property Act, held that any transfer pending suit by a party to the suit would not render the document void, but only such transfer subservient to the rights of the parties to the suit, as may be eventually determined in the suit. Therefore, the Hon'ble Supreme Court held that a purchaser *pendente lite* would be entitled to or suffer same rights and obligations of his vendor and eventually held that there being a likelihood of the vendor losing title not properly defending the suit or even colluding with the plaintiff, the purchaser *pendente lite* would have to be impleaded in the suit.



15.In *V.L.Dhandapani's case*, the Hon'ble Division Bench of this Court held that since the transferor would lose all his right and interest in litigation post transfer, a transferee *pendente lite* can be added as a party.

16.In *Suraj Lamp and Industries Private Limited's case*, the Hon'ble Supreme Court though held that transfer of title by way of Power of Attorney is impermissible in law. Still held that the ratio laid down in the said case would not affect the validity of sale agreements and Powers of Attorney executed in genuine transactions.

17.In *Ramesh Hirachand Kundanmal's case*, the Hon'ble Supreme Court held that a person to be joined as a party to the lis should be one whose presence is necessary as a party and not merely that he has relevant evidence to give on some of the questions involved which would make him only a necessary witness, but because the person would be bound by the result of the action and the question to be settled and if the question in the action cannot be effectually and completely settled, unless he is a party, then he should be impleaded.

18.In the oft-quoted decision of Justice Wynn-Parry in *Dollfus Mieg et Compagnie S.A. Vs. Bank of England* reported in (1950) 2 All E.R.611, the test



laid down is 'may the order for which the plaintiff is asking directly affect the interest of the intervener in the enjoyment of his legal rights'.

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19. Keeping the above decisions in mind and testing the facts of the present case, I have no quarrel with the settled position of law. As already discussed elaborately, the 1st respondent is not having any valid title in the first place to claim to be an interested party. Even viewing from the angle as to whether the 1st respondent's presence would be necessary to decide the issues that arise for consideration in the suit, the petitioners have instituted the suit challenging the purchase by the 2nd respondent himself. In other words, the title of the 2nd respondent itself is in question and being challenged in the suit. Therefore, a person claiming under an agreement-holder, as a legatee cannot have any claim for title or interest in the suit property. The conduct of the 1st respondent also assumes significance.

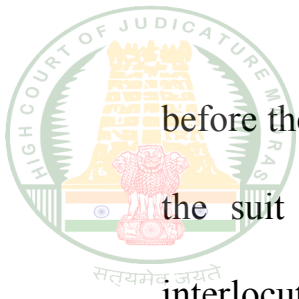
20. Even according to the 1st respondent, the 2nd respondent had lodged a complaint and given public notices that the original documents of title relating to the suit property had gone missing. A paper publication was given even as early in September 2003 and the same was followed up with police complaint and a Non-traceable Certificate was also issued. Strangely, in the agreement executed with the father of the 1st respondent, a month prior to the paper



publication, the 2nd respondent claims to have handed over the original documents of title to the 1st respondent's father. Therefore, all is not well with the claims of the first as well as the second respondents. Secondly, the letter said to have been given by the 2nd respondent to the 1st respondent's father on 30.06.2015 clearly informs the father of the 1st respondent that the suit was coming up for hearing before Additional Master IV, the very next day i.e 01.07.2015. The 2nd respondent has clearly stated that since the property is the 1st respondent's father property, he has to take all steps to safeguard the property.

21.It is further relevant to note that in the said letter, the 2nd respondent has clearly put the 1st respondent on notice, that excepting the sale agreement registered on 30.08.2003, the 2nd respondent has no further materials. It is not known how the documents of which were never handed over to the 1st respondent, can be sought to be filed by the 1st respondent, if an opportunity is given by way of impleading the 1st respondent as a party defendant to the suit.

22.It is also brought to my notice by the learned counsel for the 1st respondent that even in the impleading application, the 1st respondent has filed various documents and the same were never objected to and they were marked as Exs.P1 to P19. He would therefore state that the documents already being



before the Court, no prejudice would be caused, if the documents are marked

the suit as well, which have already been marked as documents in the

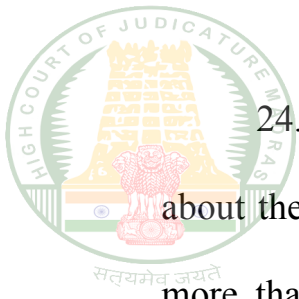
interlocutory application, by giving an opportunity to the 1st respondent to only

argue the matter based on such documents being permitted to be marked. I find

that excepting Doc.Nos.Ex.P1 to P7 and P10, all the other documents are

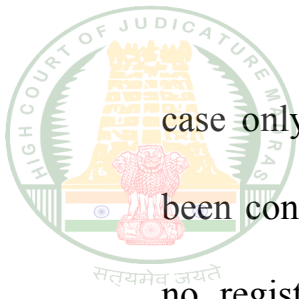
subsequent to the filing of the suit and hence, they are not of any relevance.

23.In the light of the above discussion, it is not known how the 1st respondent can even claim to have come into custody of the documents, when no documents have been handed over, except the registered sale agreement in favour of his father. In any event, when D.W.1 has not chosen to disclose the factum of the agreement of sale and Power of Attorney and alleged claim of the 1st respondent who had been put in possession of the suit property and on the contrary, the 1st respondent has authorized D.W.1 to lead evidence in the suit, who has also subjected herself to elaborate cross examine, at the fag end of trial, it is not permissible for the son of the agreement-holder to implead himself in the suit filed by the petitioners, seeking the reliefs of declaration and for recovery of possession.



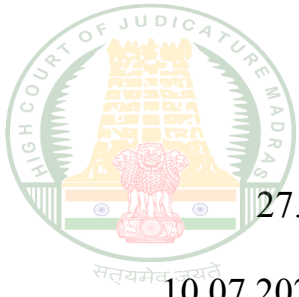
24. Moreover, when the 1st respondent's father has been put on notice about the hearing of the suit on 01.07.2015 itself, he never took any steps for more than three years until his demise and thereafter also despite the final decree in C.S.No.314 of 2019 as early as on 21.06.2021, even the 1st respondent has not chosen to rush to the Court immediately and seek impleadment. Therefore, the lethargic attitude of the 1st respondent and before him his father would also assume relevance and significance in deciding the present application. At best, it can only be noticed that the agreement-holder, namely the 1st respondent's father never showed any interest to implead himself in the suit and while so, it is not open to his son, who also did not choose to seek his impleadment based on the final decree passed on 21.06.2021, until March 2023 and it would only compel me further to not entertain the application for impleadment.

25. Even the reasons set out in the affidavit filed in support of the application for impleadment filed in March 2023, the 1st respondent, apart from staking claims under the registered agreement of sale and the Power of Attorney executed by the 2nd respondent would only refer to the final decree passed on 21.06.2021 and the letter dated 30.06.2015 which have been elaborately discussed herein above. The fact that self serving averments are made that the 2nd respondent herein had informed the 1st respondent about the



case only on 22.03.2023, is again not digestible, since the said property has been consciously made part of the partition suit, despite knowing that there is no registered sale deed in favour of the father of the 1st respondent and strangely, in the schedule of property in the suit for partition, the document number of the property, that is the agreement of sale, has been mentioned.

26.From the above, it is clear that the 1st respondent's presence is not only a proper but also not necessary party for adjudicating the claims of the plaintiffs which are being contested by the 2nd respondent. The decisions on which reliance has been placed are all cases where the parties who had come into lawful title and possession, attempted to implead themselves. In such circumstances, the Courts have tested the facts and held that the party would be a necessary party to the said litigation. In fact, in *Ramesh Hirachand Kundanmal's case*, the Hon'ble Supreme Court, after setting out the legal position, held that the impleadment by the Courts below was improper and the order was set aside. Therefore, there can be no straight jacket formula for deciding whether a party who seeks impleadment is a proper and necessary party and the same has to be tested on the facts and circumstances of each case. In view of the above, I do not find the son of an agreement-holder to be a proper and necessary party to defend the title of his vendor, which is already being defended by the vendor himself.



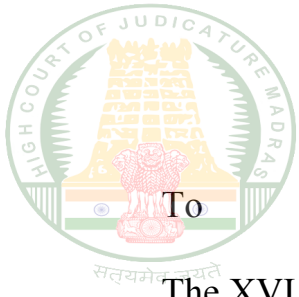
27. In fine, the Civil Revision Petition is allowed and the order dated 10.07.2024 in I.A.No.03 of 2023 in O.S.No.2422 of 2021 on the file of the XVI Additional City Civil Court, Chennai, is set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

22.08.2025

Speaking/Non-speaking order

Index : Yes/No

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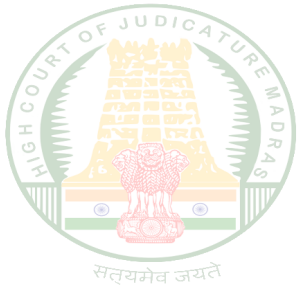


CRP.No.1957 of 2017



To
The XVI Additional City Civil Court, Chennai.

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CRP.No.1957 of 2



P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.1957 of 2025
& CMP.No.11192 of 2025

22.08.2025