

A.S(MD)No.158 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S(MD)No.158 of 2020
and
CMP(MD)No.5842 of 2020**

P.Marimuthu

.... Appellant / 3rd Party

Vs.

1.S.S.Prabhakaran

...1st respondent / plaintiff

2.Subburaj

... 2nd respondent / defendant

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree of the trial court dated 24.07.2019 passed in O.S No.26 of 2013 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur and allow the appeal and thus render justice.

For Appellant : Mr.S.Parthasarathy for Mr.R.J.Karthick

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.P.Athimoolapandian for R1

Mr.S.Sadeskumar for R2



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JUDGEMENT

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

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This appeal arises out of a suit for specific performance.

2.The plaintiff / Prabakaran entered into sale agreement on 25.07.2011 with the defendant / Subburaj. To specifically enforce the sale agreement, Prabakaran filed O.S.No.26 of 2013 on the file of the Principal District Court, Virudhunagar at Srivilliputhur on 13.03.2013. His case was that the defendant agreed to sell the suit property measuring 12 acres and 72 cents in his favour for a sale consideration of Rs.41,23,000/-. According to him, a sum of Rs.10,50,000/- was paid as advance on 25.07.2011 and further a sum of Rs.5,00,000/- was paid on 10.10.2011. Since the defendant did not come forward to conclude the transaction, he filed the said suit.

3.The defendant filed written statement stating that the time for concluding the transaction ended on 11.11.2011. Hence, the defendant sent legal notice dated 15.12.2011 cancelling the agreement itself. The defendant questioned the plaintiff's readiness and willingness to perform the contract. The defendant pleaded that the plaintiff failed to adhere to the terms of the contract. The defendant



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also claimed that the plaintiff had forfeited whatever advance amount, he had paid.

4. Based on the rival pleadings, the trial Court framed as many as four issues. The defendant, after selling the suit property in favour of P.Marimuthu / appellant herein on 16.10.2015, did not take part in the proceedings. He was set ex parte on 27.02.2019. On 13.03.2019, the plaintiff was examined as P.W.1 and Exs.A1 to A5 were marked. The suit was reserved for judgment. At that stage, Marimuthu filed I.A.Nos.1 and 2 of 2019 on 18.03.2019 for re-opening the suit proceedings and for impleading himself as the second defendant in the suit. The impleading petition filed by the appellant herein was contested by the plaintiff. On 18.07.2019, both the IAs were dismissed. Even before Marimuthu could contest the said order by filing a civil revision petition, the suit came to be decreed as prayed for on 24.07.2019. Challenging the same, this third party appeal came to be filed under Section 96 of the Civil Procedure Code by the appellant.

5. Heard the learned counsel for the appellant, the learned senior counsel for the first respondent / plaintiff and the learned counsel for the vendor / defendant.



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6.The points that arise for determination are as follows:-

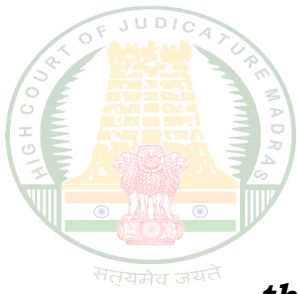
(1) Whether the subsequent purchaser is entitled to get himself impleaded in the suit proceedings and whether the Court below erred in dismissing the petitions filed by him ?

(2) Whether the petitions filed by the subsequent purchaser after the suit was reserved for judgment was maintainable?

(3) In the event of this Court setting aside the impugned judgment and decree, and impleading the appellant as the second defendant in the said suit, what are the defences open to him to canvass?

Though, the appellant claims that he is a transferee for value who has paid his money in good faith and without notice of the original contract between the plaintiff and the defendant, yet, he cannot claim any benefit under Section 19(b) of the Specific Relief Act, 1963 (unamended). This is because, the transfer did not take place before filing of the suit but during the pendency of the suit. In other words, the appellant was a transferee *pendente lite*. Therefore, the doctrine of *lis pendens* will operate against the appellant.

7.The doctrine of *lis pendens* is embodied under Section 52 of the Transfer of Property Act, 1882. It reads as follows:-



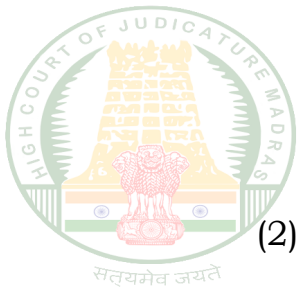
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“52. Transfer of property pending suit relating thereto.—During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government], of [any] suit or proceeding [which is not collusive and] in. which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]”

The learned counsel for the appellant in passing argued as follows:-

(1) As per Section 54 of the Transfer of Property Act, a contract for sale does not of itself create any interest in or charge on immovable property which is the subject matter of agreement.



(2) A suit for specific performance is a suit on contract.

(3) Since no right to immovable property as such is created, the doctrine of *lis pendens* and consequently, Section 52 of the Transfer of Property Act will not operate against a subsequent transferee.

The above argument is an old one and has to be rejected. In the decision reported in **AIR 1971 MP 109 (Vraj Kuwar Bai and Ors. vs Kunjbiharilal Krishnachandra)**, it was held as follows:

“14.In this connection it was contended by learned counsel appearing on behalf of the Bank that the doctrine of lis pendens cannot apply to a case for specific performance of contract. In such a suit the title passes to the plaintiff only after a sale deed has been executed. We are unable to agree with this argument. Whenever a suit is pending in respect of any property, a transfer of that property by a party would be subject to the result of the suit and a suit for specific performance is certainly a suit in respect of immovable property. There is ample authority for this proposition almost in all the High Courts in India. We may merely refer to Gouri Dutt Maharaj v. Sukur Mohammed, AIR 1948 PC 147. In this case, the doctrine was applied to a suit for specific performance which was decreed on compromise.”

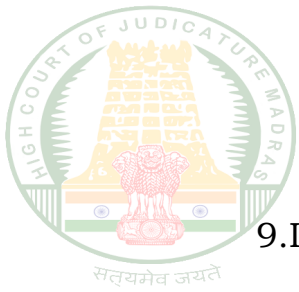
This question had been dealt in Mulla's commentary (13th Edition) in the following manner:



“(vi) Suit for specific performance

The rule of lis pendens is applicable to suits for specific performance of contracts to transfer immovable property. Section 52 of the TP Act is not subject to section 19(b) of the Specific Relief Act, 1963, which provides that specific performance of contract cannot be enforced against the transferee for value, who has paid his money in good faith, without notice of the original contract. The subsequent transferee, even though he may have obtained the transfer without notice of the original contract, cannot set up, against the agreement holder any right defeating the rule of lis pendens, which is founded upon public policy.”

8.Though the doctrine of lis pendens as provided under Section 52 of the Transfer of Property Act would operate against a subsequent transferee, it does not render all transfers *pendente lite* to be void *ab-initio*; It merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder [vide **(2024) 7 SCC 524 (Yogesh Goyanka v. Govind)].** It was further observed therein that the law has evolved in a manner that liberally enables the subsequent transferees to protect their interest in recognition of the possibility that the transferor *pendente lite* may not defend the title or may collude with the plaintiff therein.



9.In **Amit Kumar Shaw v. Farida Khatoon (2005) 11 SCC**

403, it was held that an alienee pendente lite can be brought on record either under Order 22 Rule 10 CPC or Order 1 Rule 10 CPC, and that an application filed by him should ordinarily be allowed. This is because a transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation. The defendant having no more interest in the property may not properly defend the suit. The alienee is entitled to be impleaded in the suit and heard in the matter on the merits of the case. The above decision was followed in **A.Nawab John vs. V.N.Subramaniayan (2012) 7 SCC 738**. It was observed therein that the preponderance of opinion is that a pendente lite purchaser's application for impleadment should normally be allowed or considered liberally.

10.The latest decision on the point reported in **2025 INSC 121 (H.Anjanappa v. A.Prabhakar and H.Anjanappa v. Beena Anthony)** does not bat that strongly for the subsequent purchaser. The decision rendered by a two judges bench summarizes the principles in the following terms:-

“58. From a conspectus of all the aforesaid judgments, touching upon the present aspect, broadly, the following would emerge:

- i. First, for the purpose of impleading a transferee pendente lite, the facts and circumstances should be gone into and basing on the necessary facts,



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the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;

ii. Secondly, a transferee pendente lite is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee pendente lite, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee pendente lite would depend upon the nature of the suit and appreciation of the material available on record;

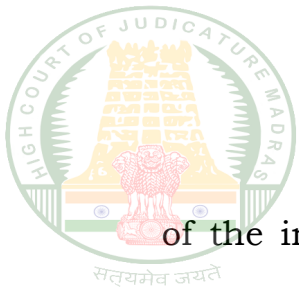
v. Fifthly, where a transferee pendente lite does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee pendente lite does not come on record, the concept of him (transferee pendente lite) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction pendente lite is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee pendente lite, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.”

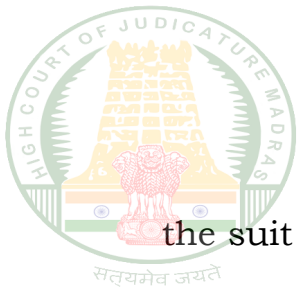
11.In the case on hand, the appellant had purchased the suit property from the defendant on 16.10.2015 vide Document Nos.2825 and 2829 of 2015 on the file of the Sub Registrar, Kunoor. He has also taken possession. He has claimed in the affidavit filed in support



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of the impleading petition that he became aware of the pendency of the suit only in the last week of February, 2019. That the appellant's vendor had failed to defend the suit is evident from the fact that he allowed himself to be set *ex parte* on 27.02.2019. He also did not challenge the decree. He chose to keep quiet. He had abandoned the contest. Section 52 of the Transfer of Property Act states that the doctrine of lis pendens will not apply where the suit proceedings are collusive. It is quite possible that by abandoning his defence, the defendant may collude with the plaintiff but judicial precedents are to the effect that even an *ex parte* decree will attract the doctrine of lis pendens.

12.The appellant claims to be a bonafide purchaser for valuable consideration. The transaction between the defendant and the appellant was duly registered. He is now in possession of the suit property. His interest is substantial and not peripheral. Since the outcome of the suit would adversely affect his interest, the Court below ought to have allowed the application. The trial court erred in decreeing the suit soon after dismissing the impleading petition without giving reasonable time to the alienee to avail the remedy of revision. There was no factual basis for coming to the conclusion that the transaction was not bona fide. Even if the alinee had a notice of



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the suit agreement, he was still entitled to call upon the court below to permit him to get impleaded. In **(2024) 7 SCC 524 (Yogesh Goyanka v. Govind)**, it was held that there exists no bar to the impleadment of transferees pendente lite with notice. In the very nature of things, substantial civil rights of the parties are involved. The plaintiff could have been compensated with costs because the impleading application was filed after the suit was reserved for judgment. We are of the view that the court below failed to exercise judicial discretion in the matter. The possibility of collusion between the plaintiff and the vendor was lost sight of. We therefore hold that the appellant is entitled to be impleaded as defendant in the suit.

13.The order dismissing the appellant's impleading petition was not appealable. He also did not file any revision petition. The appellant is entitled to challenge the correctness of the said order and set it forth as a ground of objection in this memorandum of appeal.

14.The learned Senior Counsel appearing for the plaintiff would contend that once the suit was reserved for judgment, the question of re-opening the proceedings did not arise. We reject this argument. The application was filed under Order 1 Rule 10(2) CPC and in the said provision, the expression “at any stage of the proceedings” is found.



It obviously means that any time before the judgment is pronounced, the power under Order I Rule 10(2) can be invoked. Therefore, the IA filed by the appellant for re-opening the proceedings was very much maintainable.

15.In **Amit Kumar Shaw v. Farida Khatoon (2005) 11 SCC 403**, it was observed that the object of Order 1 Rule 10 CPC is to save honest and bona fide claimants from being non-suited and that the power to add parties can be exercised by the court at any stage of the proceedings. In that case, the substitution petition under Order 22 Rule 10 CPC was filed at the second appeal stage and the Hon'ble Supreme Court held that they ought to have been made as parties.

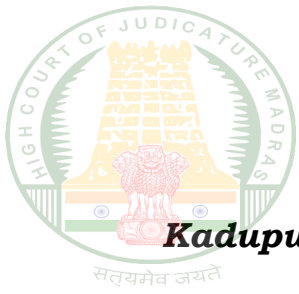
16.Once we arrive at the conclusion that the order dismissing the impleading petition is bad, the consequence is that the judgment and decree eventually passed has to be necessarily set aside and the matter has to go before the trial court.

17.Let us consider Issue No.3, namely, the defences open to the now impleaded defendant. The learned Senior Counsel appearing for the plaintiff drew our attention to the decision reported in **(1997) 5 SCC 476 (Dhanna Singh v. Baljinder Kaur)** and pointed out that it



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was held therein that the subsequent purchaser does not get any right to lead any evidence as he stepped into the shoes of the vendor who had given up the right to lead evidence. This judgment may not have any application here because in that case what was filed was only a suit for permanent injunction. It was not a suit for specific performance. It is well settled that the relief of injunction is personal. The plaintiff therein wanted to restrain the defendant from transferring possession before partitioning the same. In such factual matrix, the Hon'ble Supreme Court held that the subsequent purchaser cannot lead evidence. This judgment is clearly distinguishable on facts. Though the Hon'ble Supreme Court in its decision reported in **(1995) 2 SCC 31** (vide **Jugraj Singh v Labh Singh**) had held that the subsequent purchaser cannot question the plaintiff's readiness and willingness, a subsequent Bench of three Judges of the Hon'ble Supreme Court in its decision reported in **(2000) 2 SCC 428** (vide **Ram Awadh v Achhaibar Dubey**) overruled the same and held that it is open to **any defendant** to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. Ram Awadh decision was followed by another Three Judges Bench of the Hon'ble Supreme Court in



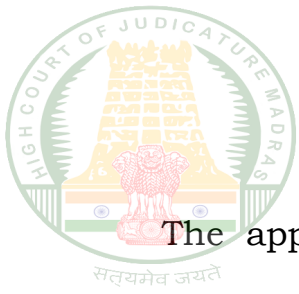
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Kadupugotla Varalakshmi v Vudagiri Venkata Rao (2021 SCC

OnLine SC 365).

18. When it was argued that an impleaded alienee is not to be heard on the merits of the appeal, the Full Bench of the Madras High Court in the decision reported in **1919 SCC OnLine Mad 80 (Poli Cherla Veeraraghava Reddi v. Cherla Subba Reddi)** held that if so, the order the alienee had obtained will be deprived of meaning (**per Oldfield J**). When once the order has been made permitting the purchaser to come in, the subject matter of the dispute in which he is interested should not be decided upon to his prejudice without hearing. That is a right which a suitor he possesses by virtue of he is being a party to the litigation (**per Seshagiri Aiyar J**). He would be bound by the orders up to the date and could not raise a defence not open to his transferrer. When an alienee has been added, he gets all the rights of a party to a suit. He cannot be reduced to a mere figurehead bound by all the acts of the original parties because his alienation was pending the suit (**per C.V.Kumaraswami Sastri J**).

19. We need to clarify as to how the proceedings before the trial court have to be conducted further. The appellant's vendor was the sole defendant and he was set exparte. He will continue to remain so.



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The appellant herein will enter the fray as the second defendant.

Since his vendor had already filed written statement and questioned the plaintiff's readiness and willingness, there is no need for the second defendant to file any written statement of his own. There is no need to even frame additional issues. The plaintiff will be recalled for the purpose of cross-examination by the impleaded defendant. The appellant herein can adduce formal evidence for the purpose of marking his sale deed. The case will be posted for arguments and the impleaded defendant can canvass all the contentions available to his vendor. The trial court shall endeavour to conclude the suit proceedings on merits and in accordance with law on or before August 31, 2025.

20. Whether to decree specific performance or not is a decision to be taken by the trial court on the merits of the matter. We have not gone into that aspect at all. In the event of the trial court declining specific performance but directing refund of the advance amount with interest, question may arise on whom the liability should fall. The appellant through his counsel gives an undertaking that since he is stepping into the shoes of the defendant / vendor, he will abide by any decree that may be passed by the trial Court following this remand. The plaintiff / respondent herein had deposited the balance sale



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consideration following the direction given by the Court below. Since the decree passed by the trial Court has now been set aside, the respondent is permitted to withdraw the said amount without prejudice to his contentions in the suit.

21.The judgment and decree dated 24.07.2019 passed in O.S No. 26 of 2013 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur are set aside and the matter is remitted to the file of the trial court. This appeal is allowed accordingly. Connected miscellaneous petition is closed. No costs.

[G.R.S., J.] [M.J.R., J.]
28.03.2025

Index : Yes / No
Internet : Yes/ No
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To:

1.The Principal District Court, Virudhunagar District at Srivilliputhur.

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The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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