



WEB COPY

CRP No. 4348 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRP No. 4348 of 2023

and

C.M.P.No.26420 of 2023

S. Lenin

..Petitioner(s)

Vs

1. G. Rathinavelu
2. M.Kumar
K. Shanmugam (Died)
3. Perumayee

..Respondent(s)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Final Orders dated 27.9.2023 passed in IA.No. 2 of 2023 in AS.No. 15 of 2013 on the file of the II Additional District Judge at Salem.

For Petitioner(s): Mr.R.Nalliyappan

For Respondent(s): Mr.K.Rajendra Prasad
(For R1)

For R2 – Not ready in notice

For R3 – Served – No appearance



ORDER

The present Civil Miscellaneous Petition has been filed to set aside the Fair and Final Orders dated 27.9.2023 passed in IA.No. 2 of 2023 in AS.No. 15 of 2013 on the file of the II Additional District Judge at Salem.

2. Heard Mr.R.Nalliyappan, learned counsel for the petitioner and Mr.K.Rajendra Prasad, learned counsel for the 1st respondent.

3. The learned counsel for the petitioner would submit that the son of the third respondent had instituted a suit for Specific Performance as against respondents 1 and 2, and the very same property had been sold by them to the petitioner's father and sister by a registered sale deed on 17.04.2013, and thereafter, they had executed a gift Settlement Deed in favour of the petitioner on 11.10.2013.

4. He would further submit that from the date of settlement, the petitioner is in possession and enjoyment of the suit property, and the revenue records have also been mutated in his name. While so, it had come to the knowledge of the petitioner about the specific performance suit, which had been decreed in favour of the third respondent, and the pendency of the appeal filed by respondents 1 and 2. Hence, he had taken out an application to implead himself,



invoking the provisions of Order I Rule 10 CPC, but the same came to be dismissed, holding him to be a pendente lite purchaser and therefore not a necessary party. He would submit that the Court below erred in failing to note that he is a bona fide purchaser without notice of the suit, and the Court had failed to consider the genuineness of the petitioner seeking to be impleaded as a respondent to the appeal. He would further submit that the respondents are colluding together to grab the property from the petitioner, and hence he is just a necessary party to the appeal to protect his rights over the property, and therefore, he seeks indulgence of this Court.

5. Countering his arguments, Mr.K.Rajendra Prasad, learned counsel appearing for the first respondent, would contend that it is only a ruse to protract the proceedings, as the third respondent is aged about 85 years. He would further rely upon a judgment of the Hon'ble Apex Court in the case of ***Kasturi Vs. Uyyamperumal & Ors.***, made in ***Civil Appeal No.2831 of 2005 dated 25.04.2005*** to contend that a pendente lite purchaser, who has stepped into the shoes pending suit, need not be made a party to such proceedings, as he would be bound by the judgment and decree passed against his predecessor-in-interest. Hence, he seeks dismissal of the revision petition.

6. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.



7. The suit filed for specific performance came to be decreed on 28.06.2012 as against the first and the second respondents. Admittedly, the property had been sold by the first and the second respondents in the year 2013, much after the decree that they had suffered. Thereafter, the petitioner had been benefited with the property by way of a settlement from the purchasers of the property, who are admittedly the father and the sister of the petitioner.

8. The suit is one for specific performance, specifically enforcing an agreement that had been entered into between the plaintiff and the defendants, and in such a suit, the petitioner can only be termed as a third party, who would be neither a proper nor a necessary party for adjudication of the *lis*.

9. A purchaser pendente lite in such cases would not be entitled to be made a party to such a *lis*. In the present case, the property had been transferred much after the decree, where there has been a decree passed directing the first respondent to execute a sale deed in favour of the third respondent. When such a positive direction has been issued by the trial Court, the first respondent had gone ahead in executing a sale deed in favour of a third party, which according to this Court is a contemptuous act.

10. Be that as it may, a perusal of the judgment of the Hon'ble Apex Court relied upon by the learned counsel appearing for the respondent in the



case of **Kasturi Vs. Uyyamperumal & Ors.**, made in **Civil Appeal No.2831 of 2005 dated 25.04.2005** would also make it clear that the view expressed by this

Court, supra, has been found in the affirmative. For better appreciation, the relevant paragraphs of the said judgment are extracted hereunder:

“16. It is difficult to conceive that while deciding the question as to who is in possession of the contracted property, it would not be open to the Court to decide the question of possession of a third party/ or a stranger as first the lis to be decided is the enforceability of the contract entered into between the appellant and the respondent No. 3 and whether contract was executed by the appellant and the respondent Nos.2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against the respondent Nos.2 and 3. Secondly in that case, whoever asserts his independent possession of the contracted property has to be added in the suit, then this process may continue without a final decision of the suit. Apart from that, the intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. In Amol Vs. Rasheed Tuck and Sons Ltd. [1956(1) All Eng.Reporter, 273] it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the Court that it may lead to a result that will effect him legally.



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17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos.1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.”

11. For the aforesaid reasons, this Court do not find any merits in the revision petition and accordingly, the revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The learned Judge,
II Additional District Court,
Salem.



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K.KUMARESH BABU, J.

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