

ORDER ON IA NO:4.

When the matter was posted for hearing on IA-1 and 2 from R 1 side, the proposed R 17 by name B.K.Thippeshappa filed this application U/o 1 R 10 R/w. Sec. 151 of CPC praying to implead him as R 17 by allowing the application.

1. In the affidavit, annexed to the application, the proposed R 17 stated that, the petitioner filed this petition on the basis of Judgment and Decree passed in O.S.No.21/2016 dt. 12-09-2022. The R 1 executed a sale agreement dt. 21-05-2007 agreeing to sell a part of Item No. 7 of schedule property i.e., 8 guntas land out of 3 acre 10 guntas land. During the pendency of the suit, on 17-08-2020, the R 1 executed the Rg.Sale Deed in favour of proposed R 17 in respect of the above property. On the date of execution of sale agreement dt. 21-05-2007, the possession of sold out property being delivered in favour of R 17 whereupon the R 17 constructed the residential house. Whereby, the proposed R 17 is absolute in possession of part of Item No. 7 of petition schedule property and as such, R 17 is necessary party to this proceedings and prays to allow the application.

2. The petitioner objected the application contending that as per the sale deed dt. 17-08-2020, the proposed R 17 claims to be purchased part of Item No. 7 schedule property which hit by lis pendency principle as the petitioner filed a suit in 2016 which came to be decreed in 2022. The R 1 intentionally having knowledge of pendency of O.S.No.21/2016 sold out part of Item No. 7 schedule property and as such, the proposed R 17 is bonafied purchaser and not a necessary party to this proceedings and prays to dismiss the application for want of merits.

3. Points that arise for consideration are,

1. *Whether the proposed R 17 made out sufficient grounds that, impleading his as detailed in the application is necessary parties to this proceedings for effective adjudication of the matter ?*
2. *What order ?*

4. Heard. Perused the records. My answers to the above points are,

POINT NO:1. : In the **Negative**.

POINT NO:2. : As per the final
order for the following,

REASONS.

5. **POINT NO:1.** By way of present application, the proposed R 17 claims that, he purchased 8 guntas land in Item No. 7 schedule property from the R 1 through Rg.Sale deed dt.17-08-2020 which was preceded by the sale agreement dt. 21-05-2007. On the date of execution of sale agreement, the R 1 delivered the possession of the sold out property in favour of the proposed R 17. Wherefore, the R 17 is bonafied purchaser for value. Contrary, the counsel for the petitioner claim that, the petitioner filed O.S.No.21/2016 which was decreed on 17-11-2022. The R 1 having knowledge of pendency of O.S.No.21/2016, sold out part of Item No. 7 schedule property which hit by lis pendency principle. Wherefore, the proposed R 17 would not get any sort of right over the purchased property since dealt with the property which is part of O.S.No.21/2016. Wherefore, the proposed R 17 is not a bonafied purchaser having no equity under law. As per Rg.Sale Deed dt. 17-08-2020, the possession of the sold out property was handed over on the same day which is against to the contention of the proposed R 17.

6. The counsel for the petitioner in support of his contention, relied upon couple of decision reported in 2017 (1) KCCR 104 (Sri. Basavaraja alias Madhu V/s Smt. Suvarnamma and others). Wherein the HHCK dealt with a situation where a suit for partition was held by the plaintiff which came to be dismissed and against the said dismissal order, the plaintiff himself preferred appeal. During pendency of the appeal, the purchaser purchased the suit subject matter property i.e., Item No.1. The HHCK clearly held that, the act of purchasing Item No.1 schedule property during pendency of appeal proceeding is hit by lis pendence. As per Sec. 52 of Transfer of property Act and the proposed purchaser is not necessary and proper party to the appeal proceedings.

7. The counsel for the petitioner also relied upon another reported in AIR 1996 SC 135 (Surjith Singh and others V/s Harbans Singh and others). Wherein also, the HSCI dealt with provision of Order 22 R 10 of CPC and this court of the purchaser during the pendency of suit and whereby clearly held that, the assignees have no right to implead as party to this suit in view of lis pendence principle.

8. Having heard both parties and considering the material available on record followed by Sec. 52 of Transfer of Property Act with regard to lis pendence principle, this court noticed that, the petitioner claims that, the R 1 executed a sale agreement dt. 21-05-2007 in respect of 8 guntas land in Itme No. 7 petition schedule property and put him in possession of said sold out property on same day. Whereas, as per recitals of sale deed, the possession of the sold out property being handed over to the purchaser on the date of execution of Rg.Sale deed dt. 17-08-2020. Further admittedly, the petitioner filed O.S.No.21/2016 which came to be decreed in 2022. The proposed R 17 obtained the Rg.Sale Deed dt. 17-08-2020 which is during pendency of the suit and definitely attracts Sec. 52 of Transfer of Property Act.

9. It is needless to observe that, any person who dealt with any property which is subject matter of suit pending before the court has no mercy under law since the rights of the parties upon the property dealt with 3rd person are pending before the court for adjudication. In order to deprive of the rights of such parties who are before the court, the 3rd party has no

absolute right to deal with the property which is under litigation before the court b/w the parties. The HHCK as well as HSCI in the decisions referred above relied upon by the petitioner clearly held that, the purchaser of pendente lite is neither the necessary nor proper party to the proceedings. In view of above observation, this point is answered in the *Negative*.

10. **POINT N0:2.** In view of foregoing reasons, I proceed to pass the following,

ORDER.

The IA-4 filed the proposed R 17 U/Or. 1 Rule 10 R/w. Sec. 151 of CPC is hereby rejected.

Call on for hear on IA-1 and 2 from R 1 side finally by. 10-06-2024.

Sr. C. J. And JMFC., Cng.,