

(1996) 09 AP CK 0088

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3097 of 1996

Sajana Granites and Others

APPELLANT

Vs

Mandava Rambabu

RESPONDENT

Date of Decision : 18-09-1996

Acts Referred:

Andhra State Act, 1953 — Section 28(2)

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(1), Order 1 Rule 10(2)

Transfer of Property Act, 1882 — Section 52

Citation : (1996) 3 ALT 1059 : (1996) 2 APLJ 316 : (1996) 1 APLJ 316

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : S. Venkata Reddy and V. Sudhakar Reddy, for the Appellant; T. Veerabhadrayya and T.S. Anand, for the Respondent

Judgement

S.R. Nayak, J.—The petitioners in this Civil Revision Petition are the plaintiffs in O.S. No. 158/92 pending on the file of the Court of the Addl. Subordinate Judge at Ongole. The C.R.P is directed against the order dated 1-8-1996 of the learned Additional Subordinate Judge passed in I.A.No. 1298 of 1996 in O.S.No. 158 of 1992 allowing the application filed by Mandava Rambabu, the respondent herein under Order 1 Rule 10 of the CPC to implead himself as defendant No. 15 in the suit.

2. The facts leading to the filing of this Civil Revision Petition be summarised briefly as under:

The petitioners filed the suit in O.S.No. 158 of 1992 in the Court of the Additional Subordinate Judge, Ongole for declaration that the plaintiffs 1 and 2 are the absolute owners of Acs.5-73 cents of land; i.e, item No. 1 of plaintiff schedule and the plaintiff No. 3 is the absolute owner of item No. II of plaintiff schedule and for permanent injunction restraining the defendants 10 to 12 (officials of the department of Mining) from granting mining licences to the defendants 1 to 9 in

respect of the plaintiff schedule land and for other consequential reliefs. The plaintiffs filed I.A.No. 2288 of 1992 along with the suit for temporary injunction restraining the respondents 3 to 5 therein (officials of the department of Mining) from granting mining licence and other allied licences to the defendants 1 and 2 regarding item No. I of the plaintiff schedule land. On 30-8-1994 the defendant No. 1 sold Acs. 3-78 cents of land comprised in item No. I of plaintiff schedule to the respondent herein. On 17-11-1994 LA. No. 2200 of 1992 was allowed and temporary injunction was granted. C.M.A.No. 1781 of 1994 was filed by the defendant No. 1 before this Court against the orders made in I.A.No. 2200 of 1992. On 8-3-1995 the defendant No. 1 was set ex parte by the learned Additional Subordinate Judge, Ongole in O.S.No. 158 of 1992. On 14-3-1995 the defendant No. 1 filed I.A.No. 573 of 1995 to set aside the ex parte order. On 23-6-1995 the respondent herein filed C.M.P.No. 8426 of 1995 in CM.A.No. 1781 of 1994 to add him as respondent No. 7 in the appeal. On 29-6-1995 the respondent herein filed I.A.No. 1327 of 1995 under Order 22 Rule 10 of the CPC praying the trial Court to add him in the place of defendant No. 1 stating that he purchased Acs. 3-78 cents in item No. I of plaintiff schedule from the defendant No. 1 by a registered sale deed dated 30-8-1994. On 14-7-1995 I.A.No. 573/95 was dismissed by the trial Court. On 8-8-1995 the defendant No. 1 filed C.J.R.P.No. 2816 of 1995 in this Court aggrieved by the order dated 14-7-1995 passed by the learned trial Judge in I.A.No. 573 of 1995. On 30-1-1996 the respondent herein was impleaded as respondent No. 6 in C.M.A.No. 1781 of 1994 and as on that date the C.R.P. No. 2816 of 1995 filed by the defendant No. 1 was pending in this Court and therefore the petitioners-plaintiffs did not oppose impleading the respondent herein as respondent No. 6 in C.M.A. No. 1781 of 1994. On 28-2-1996 C.R.P.No. 2816 of 1995 was dismissed by the Court On 11-4-1996 C.M.A. No. 1781 of 1994 was disposed of by this Court directing the trial Court to dispose of the main suit within a period of six months from the date of receipt of the copy of the order. The defendant No. 1 filed SLP (Civil) 9861 of 1996 in the Supreme Court against the orders passed in C.R.P. No. 2816 of 1995. The Supreme Court on 2-5-1996 dismissed the SLP Thus the order of the learned trial Judge setting the first defendant ex parte became final. On 20-6-1996 the respondent herein filed I.A.No. 1221 of 1996 to amend the petition in I.A.No. 1327 of 1995 so as to convert it as a petition under Order 1 Rule 10, Civil Procedure Code. On 24-6-1996 I.A.No. 1327 of 1995 and I.A.No. 1221 of 1996 were not pressed and therefore the learned trial Judge dismissed the same as not pressed. On 24-6-1996 the respondent herein filed I.A.No. 1298 of 1996 under Order 1 Rule 10, CPC to add him as 15th defendant in O.S.No. 158 of 1992. On 1-8-1996 the learned trial Judge allowed I.A.No. 1298 of 1996 impleading the respondent herein as 15th defendant in the suit. Hence this revision by the plaintiffs-petitioners.

3. Sri S. Venkata Reddy, the learned senior Counsel appearing for the petitioners contended that the respondent herein is no other than the son of the brother of the first defendant and he was quite aware of the institution of the suit in

O.S.No. 158 of 1992 by the plaintiffs; the first defendant wanted to defraud the plaintiffs and therefore he deliberately, during the pendency of the suit, alienated a part of the item No. I of the plaint Schedule property in favour of the respondent herein; only when the order of the learned trial Judge placing the first defendant ex parte became final with the dismissal of the SLP (Civil) 9861 of 1995 filed by the first defendant, the respondent herein came forward with application I.A.No. 1298 of 1996 to add him as a party defendant and there is absolutely no bona fide in the application; having regard to the provisions of Section 52 of the Transfer of Property Act, the learned trial Judge ought not to have allowed the application under Order 1 Rule 10, CPC and the order of the learned trial Judge suffers from an error apparent on its face. Sri S. Venkata Reddy, the learned senior Counsel, would maintain that at the most the respondent herein be added as a party defendant only under Order 22 Rule 10, Civil Procedure Code. Sri S. Venkata Reddy would also highlight the differences in terms of legal consequences flowing from an order made under Order 1 Rule 10, CPC and an order made under Order 22 Rule 10, Civil Procedure Code. On the other hand Sri T. Veerabhadrayya, the learned Counsel appearing for the respondent, would submit that the impugned order of the learned trial Judge is in order; the respondent having purchased the property in question for valuable consideration by a registered sale deed dated 30-8-1994 acquired title and interest in the property and therefore it could not be said that the respondent is neither a proper nor a necessary party.

4. The contentions now placed before this Court by the learned Counsel for the parties were also urged before the learned trial Judge as could be seen from the impugned order. However, the learned trial Judge did not think it necessary to consider the legal contentions placed before him in view of the order made by this Court on 30-1-1996 impleading the respondent herein as respondent No. 6 in CM. A.No. 1781 of 1994. The learned Judge has stated in the order that since the High Court impleaded the respondent herein as respondent No. 6 in C.M.A.No. 1781 of 1994, he had no other option except to implead the respondent herein as the defendant No. 15.

5. It may be pointed out, at the outset, that the learned trial Judge is not justified in ordering I.A.No. 1298 of 19% solely on the ground that the respondent was impleaded as respondent No. 6 in C.M.A.No. 1781 of 1994. C,M.A.No. 1781 of 1994 was filed by the first defendant against the order of the learned trial Judge dated 17-11-1994 granting temporary injunction in favour of the plaintiffs. The respondent, being a successor-in-interest by virtue of the registered sale deed dated 30-8-1994, this Court might have thought fit to add him as respondent No. 6 to the CM. A. Further, CM.P.No. 8426 of 1995 filed by the respondent in CM. A. No. 1781 of 1994 was not opposed. That is the only reason given by this Court to order the impleadment of the respondent. Therefore, the learned trial Judge ought to have considered the application of the respondent filed under Order 1 Rule 10(2), CPC on merits and in the light of the decisions cited before him by the learned Counsel appearing for the parties.

6. Rule 10(2) of Order 1, CPC reads:-

"Court may strike out or add parties: (2)The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

7. Sub-Rule (2) of Rule 10 is not a Code in itself as regards the Court's power to add parties to a legal proceedings is concerned. Order 22 of the Civil Procedure Code, also deals with the power of the Court to permit the impleadment of certain categories of persons. Rule 10 of Order 1 deals with the general power of the Courts to add or delete the parties. Order 22 Rule 10(1), CPC specifically deals with the power of the Court to add an alienee pendente lite. Therefore it can be said mat the provisions of Rule 10 of Order 1, CPC are general provisions whereas the provisions of Order 22 Rule 10(1) can be treated as particular or special provisions. When an Act contains general enactments relating to the whole subject-matter of the statute, and also specific and particular enactments relating to certain special matters and if the operation of the both is not similar, the general enactment should yield to the particular or specific enactment. In other words, in such a situation, the particular enactment must be Operative. The discussion to follow will establish that an alienee pendente lite can be added as a party to the legal proceeding under Order 22 Rule 10(1), Civil Procedure Code. In a given case it may so happen that an applicant may fulfil the ingredients or the necessary conditions to invoke the provisions of the general enactment as well as that of the particular or specific enactment, and in such a situation it may be permissible for such applicant to invoke the power of the Court either under the general enactment or under the particular enactment. Therefore the first question to be considered is whether the respondent herein who is admittedly an alienee pendente lite satisfies the necessary conditions to add him as a defendant to the suit under Rule 10(2) of Order 1, Civil Procedure Code.

8. Under Sub-Rule (2) of Rule 10 a person may be added as a party to a suit in the following two cases:-

(i) when he ought to have been joined as plaintiff or defendant, and he is not so joined, or

(ii) when without his presence, the questions in the suit cannot be effectually and completely decided.

9. There is no jurisdiction to add a party in any other case under Sub-Rule (2) of Rule 10. Thus a person should not be added because he would incidentally be affected by the judgment nor for merely seeing that the suit is properly defended.

10. The Supreme Court in Razia Begum Vs. Sahebzadi Anwar Begum and Others, held that the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

11. Sub-Rule (2) provides for the addition of necessary and proper parties. Necessary parties are parties who ought to have been joined, i.e., parties necessary to the constitution of the suit, without whom no decree at all can be passed. Before passing an order under Sub-Rule (2), the Court must be satisfied that the person proposed to be brought on record could have been impleaded in the plaint as originally framed and that his presence is necessary for an effective adjudication of the question in dispute. Proper parties are those whose presence enables the Court to adjudicate more effectually and completely.

12. In the light of these principles, the question which falls for consideration is whether the respondent ought to have been joined as defendant when the suit was instituted in the trial Court in the year 1992 or atleast when he acquired interest in the suit schedule property by virtue of the sale deed dated 30-8-1994. When the suit was instituted in the year 1992, the respondent was a total stranger to the suit schedule property. Therefore, impleading the respondent as defendant to the suit did not arise. In answering the next part of the question whether the respondent should have been added as defendant to the suit after he acquired a portion of the suit schedule property on 30-8-1994, the provisions of Section 52 of the Transfer of Property Act have a bearing.

13. Section 52 of the Transfer of Property Act reads: "

"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 purpose 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."

14. Section 52 of the Transfer of Property Act does not prohibit a transfer of property during the pendency of a litigation. All it says is that such transfer shall not affect the right of any party to the suit. In other words, Section 52 does not say that any conveyance made pendente lite is void. In *Nathaji Anandrav Patil v. Nama Sarjerao Patil*, (1907) 9 Bom.L.R. 1178 Bombay High Court held that the effect of the doctrine of *lis pendens* is not to annul the conveyance made in contravention of Section 52; it only renders it subservient to the rights of the parties to the litigation. Thus, a transfer of or a dealing with the property by a party to a suit during the pendency of the suit or proceeding is not *ipso facto* void. In *Nagubai Ammal and Others Vs. B. Shama Rao and Others*, , the Supreme Court held that the effect of Section 52 is not to wipe it out altogether but to subordinate it to the rights based on the decree in the suit; as between the parties to the alienation, however it is perfectly valid, and operated to vest the "title" of the transferor in the transferee. In *Sardara Singh Vs. Mohan Lal and others*, the Punjab and Haryana High Court held that the restriction imposed u/s 52 of the Transfer of Property Act is on the transferor and not on the transferee as such a transferee gets whatever rights or title the transferor had at the time of sale. The transfer when it falls within the mischief of Section 52 will be deemed to be *non est* for the purposes of *lis pendens*. The transferor will be regarded as owner of the property notwithstanding that he has transferred it. However, there is nothing in Section 52 which can lead to the conclusion that the transfer pendente lite cannot be held valid and operative as between the parties thereto. In *Smt. Bhajan Kaur and others Vs. Kanwar Devinder Singh*, Punjab and Haryana High Court held that Section 52 does not Wipe out the transaction altogether but makes it subservient to the rights based on the decree in the suit. In *Veyindramuthu Pillai v. Maya Nadan* AIR 1920 Mad 126 Madras High Court held that Section 52 only subjects the property in the purchaser's hands to the decree in which the pending litigation may end, as if no transfer has taken place. In *Gobardhan Banerjee Vs. Sukhamoy and Others*, the Calcutta High Court held that only the title acquired by a transfer would be inferior to the title acquired under the decree or order which is eventually passed in the suit, during the pendency of which the transfer is made by a party to that suit.

15. A transferee pendente lite is bound by the decree just as much as he were a party to the suit. Such transferee puts himself in privity with the suit, and must be treated not as a stranger to the suit, but as a party to it and consequently bound by the terms of the decree in full. The effect of Section 52 of the Transfer of Property Act is that a *lis pendente* transferee is bound by the decree whether on contest, *ex parte*, or on compromise. This obligation is cast on the transferee by force of the provisions of Section 52. Therefore, it is not necessary for the plaintiff to add him as a party-defendant to the suit in order to make him bound by the decree. In other words, the plaintiff is under no obligation to implead a *lis pendente* transferee.

16. The effect of Section 52 of the Transfer of Property Act is to render void, as against the decree-holder in a suit, in which any right to Immovable property

was in dispute, and entitle him to ignore, all transfers of, or other dealings with, it by the judgment-debtor from the time of the institution of the suit till the complete satisfaction or discharge of the decree which would affect the decree-holder's rights under the decree or any order made in the suit. The Explanation specifically enjoins that the prohibition against transfers or dealings would take effect from the date of the presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction and remain in force until complete satisfaction or discharge of the decree has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed by law.

17. A Full Bench of Kerala High Court in *Lakshmanan Vs. Kamal*, held that if a transfer or other dealing with a suit property pendente lite is void as against the decree holder, he is entitled to ignore it and it cannot affect his rights under the decree, and therefore no purpose will be served by bringing on record, after the transfer, the transferee or the person in whose favour the property has been dealt with; and to insist that a transferee or the person, in whose favour the property has been dealt with, should be brought on record in such cases would only be to hold out a premium to persons who desire to escape from their legal obligations and unnecessarily protract legal proceedings, and would defeat the very purpose for which Section 52 has been enacted. A Full Bench of Travancore-Cochin High Court in *Chacko Pyli v. Iype Varghese* AIR 1956 TC 147 held that a transfer pendente lite is good as between the parties thereto, and only the transferee's rights will be subject to the decree and execution thereof in the litigation, pending which the transfer is made; the plaintiff or the decree-holder would be entitled to ignore the transfer even if he has notice of it and proceed with the original party on record and the transferee would be bound by the ultimate result of the litigation even if he had no notice of it at any stage. Such a transferee would be a representative-in-interest of the party transferor. A Division Bench of Madras High Court in *Chalavadi Narasimham and Another Vs. Chalvadi Ramayya and Another*, held that an alienee pendente lite is not a necessary party to the suit at page 458 of the judgment.

18. The decisions of Kerala, Travancore-Cochin and Madras High Courts referred to above go to show that there is no obligation cast on the plaintiff to add a pendente lite transferee to the suit; the plaintiff can ignore the alienation and prosecute the suit against the vendor and obtain decree and such a decree would bind the transferee pendente lite by virtue of the provisions of Section 52 of the Transfer of Property Act; and therefore the transferee is not a necessary party to the suit. I am in respectful agreement with the opinion of the Full Bench of Travancore-Cochin High Court. However, with respect I may state that I am not persuaded to accept the opinion expressed by the Full Bench of the Kerala High Court in *Lakshmanan's* case (8 supra), as the correct one to the extent it declares that impleadment of a pendente lite transferee would hold out a premium to persons who desire to escape from their legal obligations and unnecessarily protract legal proceedings, and would defeat the very purpose for

which Section 52 of the Transfer of Property Act has been enacted, for the reasons I will State little later. I am bound by the decision of the Division Bench of the Madras High Court in Chalavadi Narasimham and Another Vs. Chalvadi Ramayya and Another,

19. In M. Subbarayudu and Others Vs. The State, , the petitioners were the accused in P.R.C.No. 2 of 1953. The Sub-Divisional Magistrate, Dharmavaram, discharged the accused for an offence u/s 395, Indian Penal Code, and converting the case into a Calendar Case, directed the accused to be tried for the other offences with which they were charged. In revision, the District Magistrate, Gooty, set aside that order Under Sections 435 and 436, Criminal Procedure Code and directed the Sub-Divisional Magistrate to commit the accused to the Court of Sessions to take their trial for all the offences with which they were charged. The accused filed Criminal Revision Case No. 603 of 1954 and Criminal Revision Petition No. 563 of 1954 in this Court to revise the order of the learned district Magistrate, Gooty. In the revision, the main question raised was whether u/s 209(i), Criminal Procedure Code, when a Magistrate finds that there are no sufficient grounds for committing the accused for trial and directs such persons to be tried before himself, the revisional powers u/s 437 can be exercised even before the conclusion of the trial before such Magistrate. The respondent-State relied upon full Bench decision of the Madras High Court in Sidda Setty Vs. Muniamma, wherein it was ruled that the powers u/s 437, Criminal Procedure Code can be exercised even before the conclusion of the trial before the Magistrate. The petitioners contended that this Court was not bound by the decisions of the Madras High Court In the context of the stand taken by the petitioners and the State, the question whether this Court is bound by the decision of the Full Bench of the Madras High Court in Nalla Baligadu's case (12 supra) arose. The revision petitions on reference by the learned single Judge and the Division Bench ultimately landed before the Full Bench of this Court for decision.

20. The learned Chief Justice K. Subba Rao, speaking for the Full Bench, held that the Madras High Court and the Andhra High Court are Courts of co-ordinate jurisdiction, after making a distinction between co-ordinate jurisdiction and concurrent jurisdiction. Alternatively, the learned Chief Justice, after referring to the writings in Broome's Legal Maxims and Salmond 's Jurisprudence, held that even if the two High Courts are deemed to be not Courts of co-ordinate jurisdiction, the Andhra High Court shall follow the Madras decisions in the same manner that the Madras High Court follows its own decisions and subject to the same limitations. Bhimasankaram J. also in his separate concurrent opinion approved the views of the learned Chief Justice. The Full Bench also cited with approbation the following passage from the decision of K. Subba Rao J. delivered in Dr. K.C. Nambiar Vs. State of Madras and Others, , as a Judge of the Madras High Court:

"If I did, I would be introducing only confusion and uncertainty and put the

subordinate judiciary in a very unenviable position. I would, therefore, unreservedly follow the procedure obtaining in our Court which is supported by principle and found satisfactory in practice. A single Judge is bound by a decision of a Divisional Bench exercising appellate jurisdiction. If there is a conflict of Bench decisions, he should refer the case to a Bench of two Judges who may refer it to a Full Bench. A single Judge cannot differ from a Divisional Bench unless a Full Bench or the Supreme Court overruled that decision specifically or laid down a different law on the same point. But he cannot ignore a Bench decision, as I am asked to do on the ground that some observation of the Supreme Court made in a different context might indicate a different line of reasoning. A Divisional Bench must ordinarily respect another Divisional Bench of co-ordinate jurisdiction, but if it differs, the case should be referred to a Full Bench. This procedure would avoid unnecessary conflict and conclusion that otherwise would prevail."

The Full Bench, ultimately followed the Full Bench decision of the Madras High Court in Nalla Baligadu's case (12 supra) and dismissed the revision petitions. Therefore the decision of the Full Bench of this Court in M. Subbarayudu's case (11 supra) is an authority for the proposition that a single Judge of this Court is bound by the decisions of Division Benches of the Madras High Court delivered before 5-7-1954, the day on which the territorial jurisdiction of the composite Madras High Court was split up and Andhra High Court was duly constituted by virtue of the notification issued by the President of India under Sub-section (2) of Section 28 of Andhra State Act (Act No. 30 of 1953).

21. The resultant position of this discussion is that the two essential conditions to add parties under Sub-rule (2) of Rule 10 of the CPC do not exist in this case, and therefore, I hold that the learned trial Judge is not justified in ordering I.A.No. 1298 of 1996.

22. However, Sri T. Veerabhadrayya, the learned Counsel for the respondent would strenuously contended that an alienee pendente lite could be added as a party to a suit under Order 1 Rule 10(2) of the CPC placing reliance on the decisions of this Court in - (i) Adapa Venkateswra Rao and another Vs. Mohammad Suleman and others, (ii) Achanta Seetharamayya Vs. Bhamidipati Gopalakrishna Murthy and Others, and (in) Shaik Muneeruddin Vs. Karnataka Power Corporation Ltd. and Another, . All these decisions are by the learned single Judges of this Court. Adapa Venkateswra Rao and another Vs. Mohammad Suleman and others, arose out of a suit filed by the first respondent in the Civil Revision Petition for specific performance of an agreement of sale. The defendants 4 and 5 were the original owners of the suit schedule property. The petitioners therein purchased the suit schedule property during the pendency of the suit, and thereafterwards they made an application under Order 1 Rule 10 of the CPC to implead them as defendants 6 and 7 on the ground that they were necessary and proper parties. The application was dismissed by the learned trial Judge. They filed the Civil Revision Petition in this Court. The learned Judge of

this Court in para 6 of the judgment stated that the only question for consideration was whether the petitioners were proper and necessary parties to the suit. There is no specific finding in the judgment that the petitioners were proper and necessary parties to the suit. However, in view of the question posed by the Court to itself in para 6 of the judgment, it can be assumed that the learned Judge thought that the petitioners were proper and necessary parties to the suit. The learned Judge ordered the application after setting aside the order of the learned trial Judge on the ground that "the petitioners have to be impleaded as defendant Nos. 6 and in order to finally adjudicate the real dispute between the parties and also to shorten the litigation and to avoid multiplicity of proceedings."

23. The decisions delivered in *Achanta Seetharamayya Vs. Bhamidipati Gopalakrishna Murthy and Others*, and in *Shaik Muneeruddin Vs. Karnataka Power Corporation Ltd. and Another*, have absolutely no bearing on the facts of this case. In those cases the petitioners-applicants who filed the applications for impleading them as defendants to the suits were not *alienees pendente lite*. Therefore, I do not find any necessity to consider those decisions. Those decisions, quite surprisingly, were cited by the learned Counsel for the respondent out of context and without any relevancy to the decision-making in this case.

24. In *Adapa Venkateswra Rao and another Vs. Mohammad Suleman and others*, though the Court dealt with an application of the assignee *pendente lite* filed under Order 1 Rule 10 of the CPC and ordered that application, no argument with reference to the statutory prohibition contained in Section 52 of the Transfer of Property Act was advanced or considered. Further, the Court's attention was not drawn to the Provisions of Order 22 Rule 1 (sic. 10) of the CPC or to the binding decision of the Division Bench of Madras High Court in *Krishnappa Chetty's* case (10 supra) and the decision of the Supreme Court in *Khemchand Shankar Choudhari and Another Vs. Vishnu Hari Patil and Others*, . It is needless to state that the learned single Judges of this Court are bound by the decisions of the Division Bench of Madras High Court delivered prior to 5-7-1954. The Division Bench of the Madras High Court in *Krishnappa Chetty's* case (10 supra) dated 17th October, 1913 held that an *alienee pendente lite* is not a necessary party to the suit. The decision of the Division Bench of the Madras High Court in *Krishnappa Chetty's* case (10 supra) can be over-ruled only by the Full Bench of this Court or by the Supreme Court as per the decision of the Full Bench of this Court in *M. Subbarayudu's* case (11 Supra). No decision of the Full Bench of this Court or that of the Supreme Court taking a view contrary to the view taken by the Division Bench of the Madras High Court in *Krishnappa Chetty's* case (10 supra) was brought to my notice. It is trite to state that only necessary and proper parties can be added to a suit under Order 1 Rule 10 of the Code of Civil Procedure. The decision of the learned Single Judge of this Court in *Adapa Venkateswar Rao's* case (14 supra) is, therefore, in direct contravention of the law laid down by the Division Bench of the Madras high Court in *Krishnappa*

Chetty's case (10 supra) and that of the Full Bench decision of this Court in M. Subbarayudu's case (11 supra). It is well settled law that a decision rendered by a Court in contravention of a binding precedent is a judgment per incuriam. In that view of the matter the decision of the learned Judge in Adapa Venkateswara Rao's case should be held to be a judgment per incuriam.

25. Alternatively, it may be pointed out that in the three decisions cited by Sri T. Veerabhadrayya, the learned Counsel for the respondent, I do not find any ratio which could guide or aid me in the decision-making in the context of the arguments advanced by Sri S. Venkata Reddy, the learned senior Counsel based on the provisions of Section 52 of the Transfer of Property Act and Order 22 Rule 10(1) of the Civil Procedure Code. The Supreme Court in B. Shama Rao Vs. The Union Territory of Pondicherry, held that "a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein".

26. A statement in a judgment, in order to be a ratio, a particular point or question should be addressed to the Court for consideration and resolution; the Court should apply its mind to that question in the premise of the law governing the question, and state the principle to resolve that question and pronounce its opinion on the basis of such principle. Then only such statement becomes a ratio, not otherwise. A ratio is the rationale of a decision; the decision itself is not the ratio. Therefore, mere conclusion of a Judge without stating the principle as the basis for the conclusion cannot be a ratio. Similarly, the relief granted to a party without the involvement of any principle cannot be equated to a ratio. The following observations of the Supreme Court in State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, are quite apposite;

"-----the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. (1941)1 KB 675: (1941)2 All ER 11), the Court did not feel bound by earlier decision as it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority." It was approved by this Court in Municipal Corporation of Delhi Vs. Gurnam Kaur, . The Bench held that, "precedents sub-silentio and without argument are of no moment" The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi."

Therefore looking from any angle, the three decisions cited by Sri T. Veerabhadrayya, the learned Counsel for the respondents are not at all helpful to

the respondent.

27. The question whether the respondent could be added as a defendant to the suit under Order 22 Rule 10(1) of the CPC does not arise directly for consideration in this case. However, Sri S. Venkata Reddy, the learned Senior Counsel for the petitioners, if I may say so, quite fairly and according to me quite rightly, submitted that the respondent be added as a defendant under Order 22 Rule 10(1) of the Code of Civil Procedure. The Supreme Court in *Khemchand Shankar Choudhary and Anr. v. Vishnu Hari Patil and Ors.* (17 supra) observed thus:

"Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Civil P.C. clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard."

28. The language employed by the Supreme Court "if he (pendente lite transferee) applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard" is quite emphatic and mandatory. The respondent-transferee pendente lite to the extent he has acquired interest from the first defendant is vitally interested in the litigation, whether the transfer is of the entire interest of the defendant or not; the latter having no more interest in the property alienated may not properly defend the suit; he may collude with the plaintiff. Hence, though the plaintiffs are under no obligation to make the respondent a party, under Order 22 Rule 10, Code of Civil Procedure, the respondent may be joined as a party at his behest. Therefore, the respondent, being a successor-in-interest, is entitled to be added as defendant to the suit under Order 22 Rule 10(1) of the Code of Civil Procedure. In fact, the respondent made I.A.No. 1327 of 1995 under Order 22 Rule 10 of the CPC before the trial Court, but, it seems, under a wrong advice and in the context of the opposition by the plaintiffs, the same was withdrawn. The order of the Court below dated 24-6-1995 dismissing I.A.No. 1327 of 1995 as withdrawn is not hit by res judicata. Therefore the respondent can make another application under Order 22 Rule 10 of the Code of Civil Procedure. In that view of the matter, I would have reserved liberty to the respondent to make such application before the trial Court. But, having regard to the direction issued by this Court in its order dated 11-4-1996 while disposing of C.M.A.No. 1781/94 to the trial Court to dispose of the suit within six months and in view of the fair submission made by Sri S. Venkata Reddy, the learned Senior Counsel, I thought it fit to give a quietus to this "interim controversy". A Full Bench of Orissa High Court in Sri

Jagannath Mahaprabhu Vs. Pravat Chandra Chatterjee and Others, while dealing with the question, rather a hypothetical question, whether an application filed by an alienee pendente lite under Order 1 Rule 10 of the CPC can be treated as the one made under Order 22 Rule 10 of the CPC observed in para 10 of the judgment:

"Assuming that he is not a proper party, he may be impleaded as an assignee under the provisions of Order 22, Rule 10(1). Even if an application has been filed under Order 1, Rule 10, labelling of the application being misconceived, the Court should ignore the labelling of the application as one under Order 1, Rule 10 and treat the same as one filed under Order 22, Rule 10(1), C.P.C, if the ingredients thereof are satisfied."

29.1 have cited this decision of the Full Bench of the Orissa High Court only for a limited purpose that an application filed by an alienee pendente lite under Order 1 Rule 10, CPC can be converted into an application under Order 22 Rule 10(1) of the CPC if the requirements of Order 22 Rule 10(1) of the CPC are satisfied. In that case the Full Bench has opined that an alienee pendente lite can be added as a defendant to the suit under Order 1 Rule 10 of the CPC while overruling the earlier decision of the Division Bench of that Court delivered in Pranakrushna and Others Vs. Umakanta Panda and Others, . In Pranakrushna and Others Vs. Umakanta Panda and Others, the Division Bench had held that in a suit for declaration of title a transferee from the defendant pendente We was neither a necessary nor a proper party inasmuch as he would be bound by the decree in the suit in view of the principle contained in Section 52 of the Transfer of Property Act. The decision of the Full Bench is not acceptable to me whereas the decision of the Division Bench is correct for the reasons stated above. The Full Bench did not examine the difference in terms of legal consequences flowing from the addition of a person as a party to the suit under Order 1 Rule 10 of the CPC and addition of a person as a party to the suit under Order 22 Rule 10(1) of the Code of Civil Procedure. Legal consequences are not similar. If a person is added as a defendant to the suit under Order 1 Rule 10 of the Code of Civil Procedure, he will be entitled to all the processorial rights as if he was impleaded as defendant at the Institution of the suit itself. Such processorial rights cannot be extended to an alienee pendente lite who may be added as a defendant tinder Order 22 Rule 10(1) of the Code of Civil Procedure. He cannot be equated with a person who may be added as a defendant to the suit under Order 1 Rule 10 of the Code of Civil Procedure, inasmuch as (he former is only an interested party whereas the latter is a necessary as well as a proper party; the former takes the role of a successor-in-interest or a legatee whereas the latter takes the role of an Independent defendant, on addition as a defendant to the suit

30. The affidavit filed in support of I.A.No. 1298 of 1996 satisfies the requirements of Order 22 Rule 10(I) of the Code of Civil Procedure. Therefore, the application of the respondent made under Order 1 Rule 10, CPC can be converted as the one made under Order 22 Rule 10(1) of the CPC and if it is so

converted, the respondent is entitled to be added as defendant to the suit. But, it should be made very clear that the addition of the respondent as defendant to the suit will Only enable him to step into the shoes of the vendor-the first defendant and he cannot claim a better or enlarged right of defence than what his vendor would have on the date of the addition. In other words, he will be bound by the proceedings which have already taken place in the suit. In that view of the matter, Sri S. Venkata Reddy, the learned senior Counsel, is sound in contending that the respondent, on addition as defendant to the suit, cannot do or claim something more in the matter of defence than what his vendor can do on the date of the order ordering the addition of the respondent as defendant to the suit

31. In the result and for the foregoing reasons and subject to the observations made in the preceding paragraphs, the Civil Revision Petition is allowed in part. The impugned order of the learned trial Judge is set aside. I.A.No. 1298 of 1996 filed by the respondent is treated as the one made under Order 22 Rule 10(1) of the CPC and the same is ordered. In peculiar facts-situation of this case, the parties are directed to bear their own costs in this Civil Revision Petition. The Registry shall send a copy of the order to the trial Court forthwith.