

(2005) 07 MAD CK 0056

In the Madras High Court

Case No : C.R.P. No. 1686 of 2001 and C.M.P. No. 9296 of 2001

A. Pethaperumal

APPELLANT

Vs

Mrs. Vetri Selvi, Mrs. Abirami and Indira

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2005) 07 MAD CK 0056

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : G. Nagarajan, for the Appellant; S. Sounthar, for R-1 and 2, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—This Civil Revision Petition is preferred against the order dated 20.02.2001 passed by the District Munsif, Nannilam

made in I.A.No. 11 of 2001 in O.S.No. 65 of 2000, allowing the Petition filed under Order 1 Rule 10(2) C.P.C, ordering impleading of the

Respondents 1 and 2. The Plaintiff is the Revision Petitioner.

2. O.S.No. 65 of 2001:- The Defendant - Indira is said to be the Tenant under the Plaintiff for the Suit House in Door NO. 33 in Nallamangudi

Village, Nannilam Taluk. Case of the Plaintiff is that she became the Tenant under the Plaintiff on 01.02.1984. On 01.02.1984, there was Oral

Agreement between the Plaintiff and the Defendant regarding the Lease. Thereafter, the rent was steadily increased and from 01.02.1995 the

Defendant has agreed to pay a sum of Rs. 300/- per month as rent. The Defendant has not paid the rent. Hence, the Plaintiff has filed

R.C.O.P.No. 7 of 2004 for vacating the Defendant, which was ordered. As per the

order in E.P.No. 22 of 1998, possession of the demised

property was also delivered to the Plaintiff on 21.07.1999. The Plaintiff has filed this Suit for recovery of arrears of rent of Rs. 10,800/-, which is payable from 01.02.1995.

3. The Defendant has filed the Written Statement contending that she was permitted by late Manickam Udayar to reside in the Suit House on a rent of Rs. 200/-. From 1995, she has paid the rent to Manickam Udayar till he was alive. Subsequent to the death of Manickam Udayar, rent was paid to Wife of Manickam Udayar - Vetriselvi and there was no arrears as alleged in the Plaint. Since there was no agreement to pay rent to the Plaintiff, the Suit claim by the Plaintiff is unsustainable. The Defendant has filed the Suit for Specific Performance in O.S.No. 77 of 1996 on the file of District Munsif Court, Nannilam. The Eviction Petition in R.C.O.P.No. 7 of 2004 was the counter blast to the Suit for Specific Performance.

The Defendant's Husband has purchased House in the same Street and the Defendant and her family moved to that house in February 1998 itself.

At the time of vacating, the Defendant has delivered possession of the Suit Property to the Wife of Manickam Udayar. Manickam Udayar is none

other than the Brother of the Plaintiff. The Defendant did not prosecute R.C.O.P.No. 7 of 1996 and she was set exparte. The Plaintiff is not liable

to pay any amount as claimed in the Plaint. The Wife and Daughter of Manickam Udayar have filed the Suit for Partition in O.S.No. 48 of 1999

and they are necessary parties to the present Suit.

4. I.A.No. 11 of 2001:- During the pendency of the Suit, Respondents 1 and 2 have filed this Application to implead themselves as Defendants 2

and 3. It is alleged that Respondents 1 and 2 have filed O.S.No. 48 of 1999 for Partition of Door Nos.32 and 33. According to the proposed

party, she is entitled to half share in those House Properties. The Appeal preferred against the Decree in O.S.No. 48 of 1999 was also dismissed.

Hence, on the basis of the Decree in O.S.No. 48 of 1999, the Respondents 1 and 2 have filed this Application to implead themselves as

Defendants to the Suit. Resisting the Application, the Plaintiff has filed a Counter Statement contending that the Defendant / Tenant and the

proposed parties have colluded together and have taken collusive steps to defeat lawful claim of the Plaintiff.

5. Upon consideration of the contentions of both parties, learned District Munsif has allowed the Application finding that the proposed parties are

entitled to share in the demised property. It was held that in the Suit for recovery of arrears of rent, the proposed parties being co-owners are

necessary parties to the Suit and it was found that the Respondents 1 and 2 are justified in seeking to implead themselves as parties to the Suit.

6. Aggrieved over allowing of the Application filed under Order 1 Rule 10(2) C.P.C, the Plaintiff has preferred this Civil Revision Petition. Learned

counsel for the Revision Petitioner has submitted that if at all the proposed parties are entitled to a share, they could only claim the rent in the

Partition Suit. It is further contended that even if the proposed parties have any share in the rental income, they cannot claim themselves to be

impleaded in O.S.No. 65 of 2000. Contending that the Plaintiff has taken all the steps in filing the Suit by paying proper Court Fees, learned

counsel has submitted that the proposed parties cannot be allowed to take the advantage of the Decree.

7. Learned counsel for the Respondents / proposed parties has submitted that the proposed parties being legal heirs of Manickam are entitled to

the share of Door No. 32 and 33. It is further submitted that when the half share of the proposed parties in Door Nos.32 and 33 had been upheld

in O.S.No. 48 of 1999 and confirmed in Appeal A.S.No. 27 of 2000, the proposed parties are entitled to claim to implead themselves in the

Demised Property Door No. 33.

8. The only point that arises for consideration is whether on the basis of the Preliminary Decree for Partition in O.S.No. 48 of 1999, can the

proposed parties seek to implead themselves as the Defendants in this Suit for recovery of arrears of rent and whether the Impugned Order

allowing the Application filed under Order 1 Rule 10(2) C.P.C suffers from material irregularity.

9. Partition Suit in O.S.No. 48 of 1999 relates to Door No. 32 and 33 of Nallamangudi Village. The proposed parties have been held entitled to

half share. The Judgment and Decree in O.S.No. 48 of 1999 (Dated 28.04.2000) was confirmed in A.S.No. 27 of 2000. As against the

concurrent findings of the Courts below, the Second Appeal in S.A.No. 795 of 2001 is pending in this Court. By a separate Judgment, this Court

has dismissed the Second Appeal, confirming the half share of the proposed parties. The main point for consideration is whether the proposed

parties are entitled to half share in the properties or entitled to claim to be impleaded as parties in this Suit for recovery of arrears of rent.

10. The right to recover arrears of rent is nothing but the mense profits of Door No. 33, which the Suit House in O.S.No. 48 of 1999. The right of

the proposed parties to the mense profits in Door Nos.32 and 33 is interse dispute between the plaintiff and the proposed parties. The Defendant -

Indira is the Tenant. She had taken the plea that she was permitted by Manickam (Husband of Vetriselvi and Father of the Second Respondent) to

reside in Door No. 33 on a rent of Rs. 200/- per month. The Defendant has also taken a plea that she has paid the rent to Manickam and after his

death, the rent was paid to the First Respondent Vetriselvi. The Defendant had taken the plea that the rent had already been paid to Manickam. If

the Defendants succeed on that plea that the rent had already been paid to Manickam, perhaps the Plaintiff's Suit might be dismissed. If really the

rent had been paid to Manickam, that has to be worked out in the final decree proceedings in O.S.No. 48 of 1999. Merely because in her Written

Statement the Tenant had taken the plea that she has become the Tenant under Manickam and paid the rent to Manickam and to the First

Respondent, on that basis, the proposed parties cannot seek to implead themselves as parties to the Suit.

11. The Plaintiff is the dominus litus. The Plaintiff cannot be compelled to fight out the litigation against whom he did not file the Suit. A necessary

party is one without whom no order can be effectively made. The proper party is the one whose presence is necessary for complete and final

decision of the question involved in the Suit. The proposed parties Vetriselvi and Abirami are neither necessary nor proper parties. Impleadment of

the proposed parties would only complicate the issues involved. In this Suit O.S.No. 65 of 2000, the Court is called upon to determine whether

the Defendant is not bound to pay the arrears of rent to the Plaintiff. If the proposed parties are impleaded, the interse dispute between the Plaintiff

and the proposed parties relating to the Partition the question of mense profits to be payable would arise in this case also, which is a subject matter

of the dispute in O.S.No. 48 of 1999 and S.A.No. 795 of 2001. It is relevant to note that the Tenant Indira is none other than own Sister of the

First Respondent - Vetriselvi. Both are daughters of Amsavalli, who is the Sister of the Plaintiff and Manickam (the same is discernible from the pleadings in O.S.No. 48 of 1999). There is every reason to presume that the Application has been filed to delay the trial proceedings in O.S.No. 65 of 2000.

12. The Respondents 1 and 2 only claimed a share in the Suit Property. As noted earlier, if they are entitled to share in the mense profits from

Door No. 33, the same is to be worked out only in the partition suit - final decree proceedings. The proposed parties are neither necessary parties

nor proper parties. The learned District Munsif has not properly appreciated the contentions in the light of the litigations pending between them.

The order of impleading the proposed parties suffer from material irregularity and is to be set aside.

13. Therefore, the order dated 20.02.2001 passed by the District Munsif, Nannilam in I.A.No. 11 of 2001 in O.S.No. 65 of 2000 is set aside and

this Civil Revision Petition is allowed. In the circumstances of the case, there is no order as to costs. The connected C.M.P.No. 9296 of 2001 is

closed. Learned District Munsif, Nannilam is directed to expedite the trial in O.S.No. 65 of 2000 and dispose of the suit expeditiously in

accordance with law.