

(2013) 04 MAD CK 0307

In the Madras High Court

Case No : C.R.P. (PD)No.2343 of 2012 & M.P. No. 1 of 2012

Alladi Staram

APPELLANT

Vs

P.L. Finance and Investment & Limited

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 2 MadWN(Civil) 510

Hon'ble Judges : Mr R.S. Ramanathan, J.

Bench : Single Bench

Advocate : Mr. D. Govinda Reddy, Advocate, for the Petitioner; Mr. T.V. Ramanujam For Mr. R. Venkatavaradha, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J. Fifth respondent/fifth proposed defendant in I.A. No.10633 of 2011 in O.S. No.14314 of 2010 on the file of the V Additional Judge, City Civil Court, Chennai is the revision petitioner.

2. Respondents 1 and 2 filed the suit on the Original Side of this court in C.S. No.1107 of 2007 for permanent injunction against respondents 3 to 5 herein and also filed O.A. No.1354 of 2007 for temporary injunction and that was granted and the same was challenged by respondents 3 to 5 herein in O.S.A. No.126, 127 and 171 of 2008 and the Division Bench allowed the appeals and set aside the order of temporary injunction and the same was confirmed by the Supreme Court in S.L.P. (Civil) Nos. 19769 to 19771 of 2008. Thereafter, respondents 1 and 2 herein filed I.A. No.10633 of 2011 to implead the revision petitioner and respondents 6 to 8 and that application was allowed and aggrieved by the same, this revision is filed.

3. It is submitted by the learned counsel for the revision petitioner that the revision petitioner and respondents 6 to 8 are neither necessary nor formal parties to the suit filed by respondents 1 and 2 especially having regard to the relief of injunction and therefore, the order of the court below is liable to be set

aside. He further elaborated his arguments by taking through the plaint allegations and submitted that according to the plaintiffs viz., respondents 1 and 2 herein, they purchased the property in Door Nos.62 and 63 in Luz Church Road, Mylapore, under a registered sale deed dated 28.6.1995 in document No.831/95 on the file of the Sub Registrar's Office, Thousand Lights from Justice Alladi Kuppusamy, Mr. Alladi Prabhakar and Mr. Alladi Sitharam the petitioner herein and they are in possession and enjoyment of the same and the defendants viz., respondents 3 to 5, who have purchased the property from the three sons of Alladi Krishnasamy Iyer on different dates cannot have any claim or right beyond 20 feet passage which is the eastern boundary to their properties and even as per their sale deeds of the year 1983 and 1984, the eastern boundary is 20 feet wide passage. Nevertheless, they made an attempt to encroach upon the property purchased by the plaintiffs which is immediately adjacent to 20 feet passage, taking advantage of the absence of a compound wall and therefore, they must be enjoined. He, therefore, submitted that the revision petitioner and respondents 6 to 8 sold their shares of property with specific boundaries to the plaintiffs/respondents 1 and 2 herein and even according to respondents 1 and 2, respondents 3 to 5 have attempted to encroach upon the property belonging to them and therefore, in a bare suit for injunction, the petitioner as well as respondents 6 to 8 are neither necessary nor proper parties and without appreciating the same, the court below allowed the application and therefore, the order of the court below is liable to be set aside.

4. On the other hand, the learned Senior Counsel Mr. T.V. Ramanujam appearing for respondents 1 and 2 submitted that the dispute is in respect of one ground 250 sqft situate in S.No.1652/3 and 1652/4 and as per the boundary recitals mentioned in the sale deed in favour of the plaintiffs/respondents 1 and 2, the said extent viz., 1 ground 250 sqft in S.No.1652/3 and 1652/4 were also sold to the plaintiffs/respondents 1 and 2 and as a matter of fact, survey numbers were also mentioned in the sale deed executed in favour of respondents 1 and 2 and while mentioning the survey numbers, sub-division 4 in schedule 1 and 2 was written in ink and that was not initialled and taking advantage of the same, respondents 3 to 5 claimed that property in S.No.1652/4 viz., the property measuring 1 ground 250 sqft situate on the eastern side of the defendant's property was not conveyed to the plaintiffs and therefore, they are the owners of the property and having regard to the stand taken by the defendants viz., respondents 3 to 5, the plaintiffs/respondents 1 and 2 filed the application to implead the revision petitioner as well as respondents 6 to 8 as parties to the suit to have complete adjudication. He further submitted that except the revision petitioner, the other proposed defendants viz., respondents 6 to 8 did not contest the application and only the revision petitioner filed counter and even in the counter, he was not definite about the property which is under dispute being sold to the plaintiffs and therefore, having regard to the stand taken by the revision petitioner in the counter and also having regard to the stand taken by defendants 3 to 6 in the suit, they are necessary parties for proper adjudication of the claim

and that was properly appreciated and therefore, the order of the court does not require any interference. He further submitted that having regard to the judgment reported in Vidur Impex & Traders (P) LTD v. Tosh Apartments (P) LTD ((2012) 8 SCC 384) and M.P. Venkatachalam v. Govindan (2010 (4) CTC 318), the vendors are necessary parties and therefore, the court below has rightly allowed the application.

5. The learned Senior Counsel Mr. T.V. Ramanujam further submitted that after the filing of the application to implead the revision petitioner and respondents 6 to 8, having regard to the stand taken by the defendants viz., respondents 3 to 5 and the revision petitioner, the plaintiffs/respondents herein filed I.A.No.666 of 2012 for amendment of the plaint and prayed for declaration of title in respect of B schedule property viz., one ground 250 sqft in S.No.1652/3 and 1652/4, New R.S.No.1652/14 and 1652/16 and certain paragraphs were added in the plaint and that application was allowed and amendment was carried out and therefore, having regard to the prayer for declaration of title in respect of property which was purchased by the plaintiffs/respondents 1 and 2, the revision petitioner and respondents 6 to 8, who are vendors, are proper and necessary parties and therefore, the petition is liable to be allowed.

6. The learned counsel for the revision petitioner submitted that though the application in IA..No.666 of 2012 was allowed, admittedly, the petitioner and respondents 6 to 8 were not parties in the application for amendment and therefore, the revision petition is not bound by the order and having failed to implead the revision petitioner and respondents 6 to 8 in the application for amendment, the same cannot be taken advantage of by respondents 1 and 2 herein and therefore, having regard to the prayer viz., permanent injunction, the vendors of the plaintiffs are not necessary parties and therefore, the revision is to be allowed.

7. The suit was originally filed in the Original Side of this Court in C.S. No.1107 of 2007 against respondents 3 to 5 for injunction. Later, due to enhancement of the pecuniary jurisdiction of the High Court, C.S. No.1107 of 2007 was transferred to the City Civil Court and re-numbered as O.S. No.14314 of 2010 on the file of the V. Additional Judge, City Civil Court, Chennai wherein I.A. No.10633 of 2011 was filed by respondents 1 and 2 to implead the revision petitioner and respondents 6 to 8.

8. The case of the plaintiffs in C.S. No.1107 of 2007 was succinctly narrated by the Honourable Division Bench in the judgment rendered in O.S.A. Nos. 126 and 127 of 2008 and the same can be extracted herein for a better appreciation of facts :-

"18.At the outset, it would be better to state the factual events which are admitted by the parties. Dr.Sir Alladi Kirshnaswami Iyer, one of the makers of the Indian Constitution, owned properties known as Norton Lodge bearing R.S.No.1652/4 with an extent of 17 grounds and also Ekamra Nivas bearing Door

Nos.62 and 63 in R.S.No.1652/3, Mylapore, having an extent of 27 1/2 grounds. He executed a deed of settlement on 18.2.1949, in favour of his three sons namely Alladi Kuppuswami, Alladi Ramakrishnan and Alladi Prabhakar, with a recital to enjoy the same absolutely as the sole and self acquired property. The three sons entered into a partition deed on 25.6.1966, whereby each had 10925 sq. ft. The partition deed has got a specific recital as follows:

"The rest of the site in Norton Lodge property is retained to be enjoyed by all the parties for a private road and each of them shall have the right of access to the portion allotted to him along the said private road. None of the parties shall have any right to act prejudicial to the right of any other with regard to the road or the road way."

19. The very reading of the partition deed would make it abundantly clear that a passage having a width of 20 feet leading to the property from Luz Church Road was kept in common for enjoyment of all the three who had the respective plots under the partition deed. The first defendant had made the purchase on 19.11.1984, and the third defendant made the purchase on 8.7.1983. The second defendant made the purchase on 10.9.2003. An extent of 1 ground and 250 sq. ft. situate on the north eastern corner of R.S.No. 1652/4 wherein originally an outhouse was situate, is the subject matter of the suit. The said property which is the subject matter of the suit is situate on the east of the north south common passage. As far as Ekamra Nivas was concerned, it was the subject matter of a suit in C.S.No.953 of 1989 which ended in a memorandum of partition deed dated 29.1.1995 between the three brothers Alladi Kuppuswami, Alladi Ramakrishnan and Alladi Prabhakar. The plaintiffs have purchased the property under a registered sale deed dated 28.6.1995, from all the three brothers.

20. While the matter stood thus, the plaintiffs have filed the instant suit alleging that the property purchased by them lies in R.S.No. 1652/3 i.e., Ekamra Nivas and also a part of R.S.No. 1652/4 to an extent of 1 ground and 250 sq. ft. situate on the north eastern corner, and the attempted interference of the defendants was the cause of action for filing the suit. While doing so, they sought for interim injunction, and it has been granted by the learned Single Judge which is the subject matter of challenge before this Court.

21. What was all contended by the defendants before the trial Court and equally as appellants before this Court is that the plaintiffs had no title to the property situate in R.S.No.1652/4; that the power of attorney who executed the sale deed virtually, did not have the power to execute the sale deed in respect of R.S.No.1652/4, and hence, no title could pass to the plaintiffs; that it was a case where not only there was defective title, but also they had no title at all, and hence, the plaintiffs have not shown any prima facie case or balance of convenience in their favour.

22. As could be seen above, out of two properties of Dr.Sir Alladi Krishnaswami

Iyer, Norton Lodge was situate in R.S.No.1652/4 with an outhouse measuring 1 ground and 250 sq. ft. on the north eastern corner, which was a part of 1652/4. It is not in controversy that the three defendants have purchased three plots from the respective owners in R.S.No.1652/4 pursuant to the partial partition. All these three plots are admittedly situate on the west of the common passage. It is also admitted that the common passage runs from Luz Church Road towards north till the end of the property. From the very reading of the sale deeds, it would be quite clear that the property that was conveyed to the three defendants was situate on the west of the private road having a width of 20 feet. Now, at this juncture, it is pertinent to point out that the appellants/defendants have not claimed any title over the suit property; but, relying upon the partition deed, it is contended that not only the 20 feet width road, but also the property in question namely 1 ground and 250 sq. ft., was also kept in common for the use of three plot owners, and they have been using so. On the contrary, the case of the plaintiffs is that the entire property in R.S.No.1652/3 was the subject matter of a civil suit; that a memorandum of understanding was entered into, and they have purchased the property in Door Nos.62 and 63 under a registered sale deed dated 28.6.1995. Thus, their entire case is rested on the said sale deed. What are all required at this stage is to find out whether they have got a prima facie case which alone would entitle them for an injunction pendente lite. No oral evidence was adduced before the trial Court. On perusal of the materials available, this Court is afraid whether it could be found that the plaintiffs have made a prima facie case for the following reasons.

23. Even before the memorandum of understanding was entered into between the parties, there was a sale agreement between the plaintiffs and the vendors on 11.2.1993 which would refer to 2/3rd undivided share of the vendors in the HUF property. The agreement referred only to R.S.No.1652/3. The sale deed that was entered into between the parties on 28.6.1995, was pursuant to the said agreement. But, there was no reference to R.S.No.1652/4 in the agreement entered into between the parties. The vendors under the deed of sale asked permission of the appropriate authority for making a sale. They have applied in Form 34-A. They have referred only to R.S.No.1652/3 and not R.S.No.1652/4. The schedule attached to the memorandum of oral partition among the three sons of Shri Alladi Krishnaswami Iyer referred only to R.S.No.1652/3; but, it did not refer to R.S.No.1652/4. Though it is contended by the plaintiffs that pursuant to the purchase in the year 1995, permission was sought for from the competent authority to demolish the outhouse, and accordingly, it was done, no specific averment is made in the affidavit or plaint that the demolition had taken place in the year 1995 or 1996. On the contrary, it is specifically admitted by the defendants in the counter that they have been parking their vehicles in that site till the demolition of the compound wall in March-April 2007.

24. Admittedly, the sale deed was signed by the two of the vendors on 28.6.1995, and the power of attorney deed was executed on 14.7.1995, in favour of one Mr. Kothandaraman. A perusal of the power of attorney deed

executed by Alladi Kuppuswami and Alladi Sitaram would refer only to R.S.No.1652/3 and did not whisper anything about R.S.No.1652/4. In that power deed, Mr. Alladi Prabhakar who was shown as one of the vendors under the sale deed, has not executed the power. Under such circumstances, it can be well stated that the said Kothandaraman had no authority, and hence the power deed placed before the Registrar for registration of the sale deed, did not confer any authority on the agent Mr. Kothandaraman to admit execution of the sale deed in respect of R.S.No.1652/4 or act as agent of Mr. Alladi Prabhakar. But, the sale deed executed contained R.S.No.1652/4 also. An endorsement has also been made as if the power deed was executed by all the three namely Alladi Kuppuswami, Alladi Sitaram and also Alladi Prabhakar; but, factually it was not so.

25. Apart from the above defects that are found in the power deed, and the lack of authority of the agent to admit execution, throughout the description of the survey number, figure "4" was found interpolated not in one place, but the entire document. The plaintiffs desired to rely upon a plan that was annexed thereto. It is pertinent to point out that it was not the original. On the basis of a copy, it cannot be taken as if R.S.No.1652/4 was originally the subject matter included for sale. The contention put forth by the learned Senior Counsel for the respondents 1 and 2 that at the time when the vendors signed the document, they were conscious of the fact that R.S.No.1652/4 was also included as subject matter of sale cannot, at this stage, be accepted without evidence for the simple reason that the permission sought for from the Income Tax Department for sale of the property and the power of attorney all would refer only to R.S.No.1652/3 and not 1652/4 at all. Apart from that, the sale deeds were executed at Hyderabad. At what juncture figure "4" came to be added has got to be explained. The learned Senior Counsel relied on a plan wherein all the parties including Mr. Alladi Prabhakar, have signed, and it was also placed in the hands of the learned Single Judge. This document cannot be given any evidentiary value at all for the simple reason that the subdivision as 1652/14 and 1652/16 was made only in the year 1995-96. But, the document was found to have been prepared in 1993 itself and signed by the parties and hence, that cannot in any way advance the case of the respondents 1 and 2/plaintiffs."

9. Having regard to the facts of the case as narrated above, the Honourable Division Bench allowed the appeals filed by respondents 3 to 5 and vacated the injunction order granted by the learned Single judge. Though in a suit for injunction, vendors of the plaintiffs may not be necessary parties and the court has to decide whether the defendants have attempted to interfere with the possession of the plaintiffs or not, having regard to the subsequent event that, amendment application was filed in I.A. No. 666 of 2012 for amending the plaint as well as the prayer and the prayer for declaration in respect of the property described in B schedule was also sought for and the amendment application was also allowed, in my opinion, the revision petitioner and respondents 6 to 8, who are vendors of the plaintiffs, viz., respondents 1 and 2 are necessary parties.

10. In the judgment reported in 2010 (4) CTC 318, the learned Judge relying upon the judgment in *Ramesh Hirachand Kundanmal v. Municipal Corporation Of Greater Bombay And Others* (1992 (2) SCC 524), held that to give a complete adjudication in a suit for declaration of title and to avoid multiplicity of proceedings, it would be necessary to go into the fact whether the predecessors in title had valid right over the property in question on the date, when they conveyed the same to the parties to the suit and any decision on such question would have a binding effect on the vendors and therefore, they are necessary and proper parties. It is useful to refer to the observation of the Honourable Supreme Court made in 1992 (2) SCC 524 which reads as follows :

"13. A clear distinction has been drawn between suits relating to property and those in which the subject matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.*, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Miegiet Compagnie S.A. v. Bank of England*, that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated :

"The test is "May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights"".

11. In the judgment reported in (2012) (3) MWN (Civil) 87 (SC) *Vidur Impex and Traders Pvt. Ltd. v. Tosh Apartments Pvt. Ltd. & others*, the Honourable Supreme

Court dealt with Order 1 Rule 10 and 9 and explained who is a necessary party and proper party as follows :-

"41.1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

41.3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment."

12. If we consider the merits of the present revision in the light of the principles laid down by the Honourable Supreme Court in the judgment, the petitioner as well as respondents 6 to 8 are necessary parties as effective decree cannot be passed in their absence. Further, they are also proper parties in the sense that their presence would enable the court to completely, effectively and properly adjudicate upon all the issues though no relief is sought for against such persons. Therefore, having regard to the law laid down by the Honourable Supreme Court in the aforesaid judgments and having regard to the fact that when the plaint was amended by virtue of the order passed in I.A. No.666 of 2012 and declaration alone was sought for, the proposed parties viz., respondents 6 to 8 are proper and necessary parties for effective and complete adjudication of the lis in this matter. Hence, I do not find any reason to interfere with the order of the court below.

13. In the result, the revision is dismissed. No costs. The connected miscellaneous petition is also dismissed.