

(2005) 07 MAD CK 0038

In the Madras High Court

Case No : Civil Revision Petition (PD) No's. 723 and 724 of 2004

A.N. Srinivasan

APPELLANT

Vs

C.N. Sivakolundu Chettiar and Others

RESPONDENT

Date of Decision : 05-07-2005

Acts Referred:

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

Citation : (2006) 2 CTC 190

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : C.R. Rukmani, for the Appellant; S. Balasubramanian, for the Respondent

Judgement

R. Banumathi, J.—These revisions are preferred against the order made in I.A.Nos.817 and 818 of 2003 made in O.S.Nos.255/2003 and

257/2003 on the file of the District Munsif Kanchipuram dated 04.11.2003, allowing the petitions filed under Or.1 R.10(2) CPC to implead

Respondents 1 to 4/Landlords as Defendants 2 to 5. The first Defendant/Tenant is the Revision Petitioner.

2. O.S. No. 255/2003 and 257/2003 :-

In both cases, case of the Plaintiffs is that they are cultivating tenants under the Defendant Srinivasan. M/s. Sivakozhundu Chettiar, Namasivaya

Chettiyar, Thirunavukkarasu and Sambanthamoorthy Chettiyar of Kanchipuram are the owners of a number of items of suit properties and the vast

extent thereon. Plaintiff is cultivating tenant under the original tenant - Defendant. Defendant has been trying to dispossess the Plaintiff from

schedule mentioned properties. Hence the Plaintiffs have filed the suit against the original tenant viz., the Defendant - Srinivasan.

3. Defendant - Srinivasan has been cultivating tenant under the above said Landlords/Petitioners in I.A.Nos.817/ 2001 and 818/2001. For

convenience, the proposed parties are herein after referred as Petitioners/Landlords. Since the Petitioners/landlords were impleaded as parties to

the suit O.S. Nos. 255 and 257/2003, the Petitioners/landlords have filed applications I.A. Nos. 817 and 818 of 2003 to implead themselves as

Defendants 2 to 5 in the above suits. According to the Petitioners/Landlords, the suits have been filed by the Plaintiffs in collusion with the

Defendant/ Srinivasan. It is further alleged that the Petitioners/ Landlords are necessary parties to the suit and that any judgment in the suit would

affect their interest and hence, seek to implead themselves as Defendants 2 to 5.

4. Plaintiff has not filed any counter statement to I.A.Nos. 817 and 818/2003. Nor has the Defendant/second Respondent filed counter statement

denying the allegations in the affidavit. According to the Defendant/Srinivasan, proposed parties are attempting to obstruct the Defendant's

possession and enjoyment through the Plaintiff, since their attempts for eviction had become futile. The proposed parties were paid Rs. 2,64,000/-

through Special Sub Collector (Revenue) and all the eviction petitions filed against the Defendants were dismissed. The proposed parties have set

up Plaintiffs and filed the suit and the application for interim injunction and that the proposed parties are not necessary parties to the suit.

5. Upon consideration of the contentions of both parties, the learned District Munsif found ""that any order passed in the present suit would affect

the right of the original owner of the property and hence for effective and complete adjudication, and in order to settle all the questions involved in

the suit, the Petitioners are necessary parties to the suit and in the injunction petition"". Inter alia, on the above findings, the learned District Munsif

allowed the application ordering impleading of the proposed parties as the Defendants 2 to 5.

6. Aggrieved over the allowing of the petition, Defendant/Srinivasan has preferred these revisions. The learned counsel for the Revision Petitioner

has contended that the proposed parties are not necessary parties to the suit. It is the further contention that if really sub tenancy is proved it may

be a good ground for the proposed parties for evicting the Defendant and cannot seek to implead themselves as parties. Drawing the attention of

the Court to the number of litigation between the parties, the learned counsel for the Revision Petitioner has submitted that in almost all the

litigation, matter had either been compromised or settlement have been reported. It is further submitted that when the Defendant has not denied his

tenancy under the proposed parties, the landlords cannot seek to implead themselves as parties to the suit and at the most the proposed parties

can only be spectators in the litigation.

7. Countering the arguments, the learned counsel for the proposed parties/ landlords submitted that in the light of the several rounds of litigation

between the parties, the proposed parties are very much necessary. Any decision behind their back would have serious consequences. It is further

submitted that if the owners/proposed parties are impleaded, there is every possibility of the Plaintiff obtaining a collusive decree which might later

be used against the landlords.

8. Upon consideration of the contentions of both parties, the impugned Order and other materials on record, the following points arise for

consideration in these revisions:-

(i) in the light of several rounds of litigation, is not the real owners viz., the Petitioners/landlords necessary parties to the suit ?

(ii) Whether the impugned Order allowing the proposed parties to be impleaded as Defendants 2 to 5 suffer from any erroneous approach or

material irregularity, warranting interference ?

9. The suit property relates to S.No. 55 and 27 in Thiruvamalai Village and other Survey Numbers. The proposed parties viz., Sivakozhundu

Chettiar, Namasivaya Chettiyar, Thirunavukkarasu and Sambanthamoorthy Chettiyar are the owners of a number of properties to a vast extent of

23.25 acres, most of which are wet lands. The proposed parties are the landlords and the Revision Petitioner has been a tenant under them. As

detailed infra, there had been several rounds of litigation between the landlord and the original tenant - the Defendant. The present Plaintiffs claim

to be sub tenants under the Defendant. Alleging collusion between the Plaintiffs and the Defendant and that only the Defendant had put up the

Plaintiffs to file the suit to obtain some order behind the back of the proposed parties 1 to 4, the Respondents 1 to 4 have filed the application

under O.1 R.10(2) CPC to implead themselves as parties to the suit. As against

the order of dismissal, curiously the dominus litus viz., the Plaintiff has not preferred any revision. Only the original tenant who is entangled in several rounds of litigation with the landlords/proposed parties has filed this revision.

10. The Defendant is in occupation of vast extent of wet lands. As in other cases of landlord - tenancy, there are several rounds of litigation

between the parties. To have an understanding as to how the landlord and the tenant had been entangled in a series of litigation, we may usefully

refer to few such litigations :-

A) Earlier, the Petitioners/Landlords have filed O.S.No. 37 /1970 before the District Munsif Court, Kanchipuram - Renumbered as O.S.No.

71/1975 before the Sub Court Kanchipuram. Alleging that the suit properties are the Trust Properties and that the Defendant had taken the lands

under the registered lease, Tenant/Srinivasan has filed the suit for permanent injunction against the landlords. The suit was transferred to the Sub

Court Kanchipuram and renumbered as O.S.No. 71/1975. In the said suit, finding was given that the Defendant was a tenant by holding over and

that he was in arrears of rent from 1970. Even after the Judgment in the said suit, the Defendant had not paid the rents regularly. Only from 1977

onwards, the Defendant has paid the rents and the same were received and receipts were issued without prejudice to the rights of the proposed

parties.

B) O.S.No. 83/1982 :

This suit was filed on the file of Sub Court, Kancheepuram for delivery of possession and for payment of arrears of Rs. 7,800/-. According to the

landlords, notice was issued to the Defendant, terminating his tenancy by the end of 30.6.1982. The Defendant opposed the suit raising the issue of

maintainability of the suit. The Defendant had also filed I.A.No. 491/1984 to try the issue relating to the maintainability of the suit as a preliminary

issue. The sub Court, Kanchipuram dismissed the application by stating that the application would be decided in the suit along with other issues.

C) C.R.P.No. 477/1985 :-

As against the order of dismissal of the application in I.A.No. 491/1984, the Defendant has preferred this revision. The revision was allowed

holding that the Civil Court has no jurisdiction to try the suit and the suit filed for recovery of possession will have to be transferred to the concerned authority under T.N. Act 25/1955.

D) Apart from the above litigation, another suit O.S.No. 22/1986 was filed, in which settlement was reported stating that the matter has been settled out of Court.

11. Apart from the number of litigations in the civil Court, there had been several petitions for eviction against the Defendant filed before the

Special Deputy Collector (Revenue). Many of the applications have been filed for eviction on the ground of non payment of Kuthagai. The

Petitioners/landlords have filed C.T.P.Nos.26/2000, 12/2001, 11/2002, 7/2003, 18/2004 for eviction on the ground of arrears of rent. Most of

the petitions have been filed for eviction on the ground of non payment of rent. The last application had been CTP No. 18/2004. That apart, tenant

and Defendant Srinivasan had also filed F.R.A.No. 17/2003 for fixation of fair rent. The Defendant has also filed W.P.No. 7178/2004 to issue

direction to the Special Deputy Collector (Revenue) for early dismissal of F.R.A.No. 17/2003 prior to the disposal of other applications filed for

eviction. In W.P.No. 7178/2004, this Court has directed the application in F.R.A.No. 17/2003 to be tried along with the other applications and to

pass the appropriate orders thereon.

12. That apart, there was another application filed in C.T.P.No. 46/1987 filed by the Petitioners/landlords for eviction on the ground of non-

payment of kuthagai. The petition came up for hearing on 7.2.1988. Ex.B-4 is the order of the Special Deputy Collector (Revenue) in C.T.P.No.

46/1987 dated 17.2.1988. By a reading of Ex.B-3, it is clear that when the petition came up for hearing on 7.2.1988 the Petitioners/Landlords

reported receipt of the arrears of rent and prayed to dismiss the application as settled out of Court. Accordingly, C.T.P.No. 46/1987 was

dismissed as settled out of Court. Thereafter, the Petitioners/landlords have also filed C.T.P.No. 42/1999 for eviction on the ground of non

payment of rent. Thus it is clear that the proposed parties and the tenant Defendant/ Srinivasan are entangled in several rounds of litigation both in

the civil Court as well as before the Revenue Court.

13. In the order in C.T.P.No. 42/1999, it has been stated that the tenant -

Defendant Srinivasan was directed to pay Rs. 63,900/- before 29.11.2000. In C.T.P.No. 42/1999, the Petitioners/landlords have reported that the conditional order has been complied with and the tenant has paid the arrears of rent and in view of the payment of arrears of rent, they have ""not pressed"" that petition. Pointing out that the number of petitions have either been ""not pressed"" or that the Petitioners/landlords have received the arrears of rent, the learned counsel has submitted that when the arrears of rent has been paid, in the suit between the Defendant and the Plaintiff, who claims to be the Sub tenant, the presence of the Petitioners/landlords is not at all necessary. Of course, in the number of earlier petitions filed before the Revenue Court, the Petitioners/Landlords have received the arrears of rent and not further proceeded with those petitions. It only shows the conduct of the Defendant in not paying the arrears of rent thereby, driving the Petitioners/Landlords to the repeated filing of the petitions to collect the legitimate Kuthagai amount payable. It is relevant to note that the landlords have been entangled in a series of litigation with the Defendant who is in occupation of vast extent of wet lands. In such facts and circumstances of the case, the presence of landlords is very much essential for complete and effective adjudication in the suit.

14. The necessary party is one without whom no order can be effectively made. A party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. Where the impleadment of a person would change the complex of the litigation his/her presence is neither necessary for the decision of the question involved in the proceedings nor to enable the Court effectively and completely to adjudicate upon and settle the question involved in the case such a person is neither a necessary nor a proper party [J.J. Lal Pvt. Ltd. and Others Vs. M.R. Murali and Another, .

15. In the light of several rounds of litigation between the parties, the learned District Munsif has rightly held that the Petitioners/Landlords are necessary and proper parties to the suit.

16. The learned counsel for the Revision Petitioner/ Defendant has contended that the right of the Petitioners/ landlords could be worked out in the litigation before the Revenue Court and that the Petitioners/landlords could only be spectators to the suit O.S.No. 255/2003 and 257/2003. It is

the further contention that if at all sub-tenancy is proved that could only be an additional ground for the landlords to seek for eviction. This

contention does not merit acceptance. The Petitioners/landlords would be bound by the result of the suits O.S.No. 255/2003 and 257/2003. If the

landlords are denied the opportunity to be impleaded as parties to the suit, it would seriously affect their interest. Or.1 R.10(2) CPC is the

provision which enables the court to add a person as a party at any stage in the proceedings if the presence of such person is necessary to decide,

adjudicate all questions involved in the suit. We may usefully refer to the following observation reported in the decision Sampatbai and Another Vs.

Madhu Singh Gambhirji, :

The test is not whether the joinder of the person proposed to be added as a Defendant would be according to or against the wishes of the Plaintiff

or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the Plaintiff. It is whether the

relief claimed by the Plaintiff will directly affect the intervenor in the enjoyment of his rights The intervenor must be directly and legally interested

in the answers to the questions involved in the case.

17. In another decision reported in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, the Supreme Court

held that the resistance of the Plaintiff to joint the new party may not be a relevant consideration if the proposed party's rights are likely to be

affected by the ultimate decision. In Razia Begum V. Anwar, AIR 1958 SC 886, the Supreme Court drew inter-alia the following conclusions :

(1) That the question of addition of parties under Rule 10 of Order 1 of the CPC is a question of judicial discretion;

(2) That the person who has to be added as a party must have a direct interest distinguished from a commercial interest;

(3) The rule of present or direct interest may be relaxed in a suitable case where the subject matter of a litigation is a declaration as regards status

or a legal character, etc.

Keeping the above principles in mind let us consider the facts of the case in hand. It cannot be denied that at every stage, the Petitioners/landlords

were compelled to file petitions before the Revenue Court to collect the arrears of rent and at each stage, the Defendant has been resisting the

payment of Kuthagai. Considering the conduct of the Defendants, the apprehension of the Petitioners/landlords that suit is a collusive one between the Plaintiff and the Defendants cannot be brushed aside as baseless. The Defendant who is pitted against his landlords cannot be heard to contend that the proposed parties/Petitioners landlords are not necessary parties.

18. Pointing out the series of litigations between the parties and other circumstances, the learned District Munsif has rightly allowed the application under Or.1 R.10(2) CPC. Since the decision in this suit would affect the interest of the Petitioners/landlords, order of impleading the proposed parties is well in accordance with the well settled principles. The impugned Orders do not suffer from any material irregularity warranting interference. These revisions have no merits and are bound to fail.

19. For the foregoing reasons, decree and fair order made in I.A.Nos.817 and 818/2003 in O.S.Nos.255 and 257/2003 on the file of the Principal District Munsif Court, Kanchipuram are confirmed and these revisions are dismissed. Consequently, C.M.P.Nos.7060 and 7061/2004 are also dismissed.

20. The Revision Petitioner/Defendant is directed to pay a cost of Rs. 5000/- (Rupees Five Thousand only) to the Respondents 1 to 4/proposed parties.