

(2008) 03 MAD CK 0105

In the Madras High Court

Case No : L.P.A. No. 54 of 2002 and C.M.P. No. 10666 of 2006

Ashok Kumar

APPELLANT

Vs

K. Sabarinathan, Jeyalakshmi and Repatriates Co-op. Finance
and Development Bank Ltd.

RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

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

Citation : (2008) 2 CTC 483 : (2008) 2 LW 185 : (2008) 4 MLJ 762

Hon'ble Judges : S.J. Mukhopadhaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : A. Muthukumar, for the Appellant; A.V. Bharathy, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This appeal has been preferred by third party, auction purchaser, against judgment dated 20th Sept., 2001, passed by learned single Judge in A.S. No. 1034/86. By the said judgment, learned Judge, while dismissed the appeal and confirmed the judgment and decree of the trial court, the miscellaneous petition preferred by the appellant herein for impleading him as a party respondent to the said appeal was also rejected.

2. The only question that arise for consideration in this case is whether the appellant was a necessary or proper party to be impleaded in the appeal suit in question.

3. For determination of the aforesaid issue, it is not necessary to discuss all the facts, claim and counter claim of the parties in the suit, except the relevant ones as noticed hereunder :-

A suit for specific performance of the agreement of sale dated 14th May, 1973, being O.S. No. 2549/81, was filed by the 1st respondent, K.Sabarinathan against the husband of the 2nd respondent, Jeyalakshmi, on the file of the VI Additional

Judge, City Civil Court, Madras. The said suit having decreed in favour of the plaintiff, by judgment and decree dated 23rd July, 1986, the appeal suit in question, A.S. No. 1034/86 was preferred by L.Sadagopan, the husband of the 2nd respondent, who was the defendant in the suit.

4. Though it is not so relevant, but for understanding the grievance of the appellant herein, it is better to notice certain facts and claim as was made by plaintiff and defendant in the suit.

The case of the plaintiff was that the defendant was allotted with plot No. 477 in K.K. Nagar, Chennai, by Tamil Nadu Housing Board on 1st April, 1969. On his request, the plaintiff advanced the full amount and paid the same to the Housing Board. Thereafter, the defendant mortgaged the plot to the Madras City Co-operative House Mortgage Society Ltd., for Rs. 25,000/= for putting up construction on the plot. On 14th May, 1973, the defendant entered into an agreement with the plaintiff by which the defendant agreed to transfer the plot to the plaintiff, as the plaintiff had already paid the full amount to the Housing Board and also agreed to discharge the abovesaid mortgage. The plaintiff also agreed to pay further instalments to the Housing Board. Further case of the plaintiff was that the defendant has delivered possession of the plot to the plaintiff and, accordingly, the plaintiff has discharged the mortgage and paid the instalments due to the Housing Board.

The defendant, on appearance, disputed the claim and took plea that the plot was originally allotted to his wife and she has paid 25% of the cost of the plot on 9th May, 1968 to the Housing Board. The defendant was paying the balance instalment for the plot and the plaintiff did not advance any money for the plot. The defendant discharged the mortgage in favour of Madras City Co-operative House Mortgage Society and had not entered into any agreement on 14th May, 1973 with the plaintiff. The defendant had put up the construction on the plot with his own money and since construction work was entrusted to the plaintiff, he was permitted to occupy the portion of the plot. The plaintiff did not pay any money for the said plot and, therefore, the suit was liable to be dismissed.

5. Learned trial court framed five issues and on appreciation of oral and documentary evidence, decreed the suit by judgment and decree dated 23rd July, 1986 in favour of the plaintiff. The said judgment was challenged by the defendant in the appeal suit in which the present appellant, a third party, auction purchaser, filed petition, C.M.P. No. 19225/99 to implead him as respondent.

6. The present appellant, who filed the impleading petition before the appellate court, has taken similar plea as was taken before the first appellate court. According to him, the defendant and his wife executed a mortgage deed on 29th June, 1983 in favour of Repatriates Co-operative Finance and Development Bank Ltd.; since the defendant failed to pay the amount, the said Co-operative Bank constrained to bring the property for sale by auctioning in public; in the auction held on 3rd May, 1995, the present appellant/petitioner participated and he was

declared as the highest bidder and he was asked to deposit Rs. 2,40,000/= and, accordingly, he complied with the same. Only thereafter he could come to know that the plaintiff filed a writ petition in W.P. No. 6396/95 and obtained stay of confirmation of the sale. Therefore, the appellant/petitioner, auction purchaser, filed a miscellaneous petition in the said writ petition, W.M.P. No. 23412/98 to implead him as a party in the said writ petition, which was allowed and after hearing the parties, the writ petition was finally dismissed on 20th Dec., 1998, holding that the auction would be subject to the decision of this Court in the appeal. In view of the aforesaid observation, the appellant/petitioner, auction purchaser, filed the petition to implead him as 2nd respondent in the appeal.

7. Both the plaintiff and the defendant filed their counter objection to the same. The wife of the defendant, 2nd respondent herein, objected the impleading petition on the ground that the auction purchaser is in no way concerned or interested in the appeal and as such he has no say or right as necessary or proper party in the appeal.

The plaintiff objected the petition on the ground that the auction conducted by the bank and the alleged bid in favour of the auction purchaser are not binding upon him. As per order passed in W.P. No. 6396/95 dated 20th Dec., 1998, the proceeding initiated by the Co-operative Bank is subject to the result of the appeal suit and as on date the auction purchaser does not have any enforceable right to ask for impleading him as a party to the proceeding.

8. Learned single Judge, by impugned judgment dated 20th Sept., 2001, having noticed the law laid down by this Court in Somasundaram Chettiar and others Vs. Balasubramanian, , held that the auction purchaser was neither a necessary party nor a proper party.

9. Learned Counsel appearing on behalf of the appellant, while took similar plea, also referred to Supreme Court decision in Sumtibai and Ors. v. Paras Finance Co. Mankanwar, etc. and Ors. reported in 2007 (4) LW 865. According to him, a third party can also be impleaded as a party respondent in a suit for specific performance if it can show a semblance of title or interest.

10. We have heard the parties, noticed the rival contentions and the judgments as referred by the parties.

11. It is true that necessary party is one without whom no order can be effectively made. The appropriate party is one, who is necessary for final decision of the question involved in the proceeding. The addition of parties would depend upon the facts and circumstances of the case coupled with the relief sought for in such case. In this connection, one may also refer to Order I Rule 10 of the Code of Civil Procedure, which provides that only a necessary or proper party should be added.

12. In the case of Sumtibai (supra) as referred to by Counsel for the appellant, the Supreme Court distinguished its earlier decision in Kasturi Vs. Iyyamperumal

and Others, . The Supreme Court held that the decision in Kasturi's case (supra) cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by "A" against "B", a third party "C" can never be impleaded in that suit. If "C" can show a fair semblance of title or interest, he can certainly file an application for impleadment. Otherwise it would lead to multiplicity of proceedings because, then "C" will have to wait until a decree is passed against "B" and then to file a suit for cancellation of the decree.

13. At this stage, we have also noticed the 3 Judges Bench decision of the Supreme Court in Kasturi's case (supra). In the said case, the Supreme Court held that in a suit for specific performance of a contract or for sale of property, a stranger or a third party to the contract cannot be added as defendant in the suit. The subsequent decision in Sumtibai's case (supra), though rendered by 2 Judges Bench of the Supreme Court, but it distinguished the earlier case on the facts of the subsequent case.

14. In this background, we have also noticed the relevant facts of the present case.

The appellant herein/petitioner auction purchaser, took part pursuant to public auction and deposited part amount of Rs. 2,40,000/=. The total consideration amount has not been paid nor sale certificate has been issued in his favour. Therefore, it cannot be held that the appellant/petitioner, auction purchaser has any semblance of title in respect of the land in question. Merely because he had taken part in the public auction and being the highest bidder, depositing part of the amount, he cannot claim interest on the said property, having no semblance of title.

15. In view of the aforesaid legal position, it will be evident that the appellant has failed to make out any case to implead him as a party respondent to the appeal suit in question and, thereby, we find no error in the impugned judgment passed by learned single Judge. There being no merits, the appeal is dismissed. Consequently, connected miscellaneous petition is also dismissed. But there shall be no order as to costs.