
(1986) 04 MAD CK 0029
In the Madras High Court

A.S.V. Varadachariar and Others

APPELLANT

Vs

Sri Pounderikapuram Swami Ashram, Srirangam and Others

RESPONDENT

Date of Decision : 23-04-1986

Acts Referred:

Citation : (1986) 99 LW 1099 : (1987) 1 MLJ 85

Hon'ble Judges : M.A. Sathar Sayeed, J

Bench : Division Bench

Judgement

M.A. Sathar Sayeed, J.—The above revision petitions have been filed questioning the correctness and legality of the order of the XV Assistant Judge, City Civil Court, Madras, in I.A. No. 22998 of 1985 in O.S. No. 7462 of 1983.

2. The facts of the case are as follows : The petitioners in C.R.P. No. 1322 of 1986 filed O.S. No. 7462 of 1983 against the first respondent/defendant (Sri. Poundarikapuram Swami Ashramam, Srirangam by its present Head of Institution Sri.Gopala Desika Maha Desikan, Srirangam) praying for a declaration that the name and title "Srirangam Srimad Andavan Ashramam¹ exclusively belong to the Institution of which the plaintiffs are the disciples and the title "Srimad Andavan" belongs only to the plaintiffs of the said Institution. They also sought an injunction restraining the defendant from using the said name or title. A written statement was filed by the defendant. In view of the averments of the plaintiffs and in view of the stand taken by the defendant in the written statement, the defendant in the suit, sought impleading "Srirangam Srimad" Andavan Ashramam represented by its present head of the Institution Sri.Vedantha Ramanuja Maha Desikar Periyar Ashramam, Srirangam" as a party to the suit: I.A. No. 22998 of 1985 was filed by the defendant contending that for the effective adjudication of the lis between them and for the proper appreciation of the facts of the case, the Head of the proposed Institution is a necessary and a proper party to the suit. Though there are several other allegations levelled against each other. I am of the view, that they need not be traversed in this order. A counter affidavit was filed by the plaintiffs opposing

impleading the Head of Institution as a party to the suit. It was contended by the plaintiffs that no one can be impleaded as a party to the suit against the wishes of the plaintiff who is the dominus litis and nobody can be added as a party to the suit without their consent. It was further averred that the proposed party is neither necessary nor a proper party to the suit and the defendant is only trying to drag on the proceedings by frivolous applications of this kind. On notice to the proposed party, he has also filed counter, contending that he is not a necessary party to the suit, since the plaintiffs do not seek any relief against him. There are certain other averments also in the counter, which I need not mention in this" order. On the basis of the contentions of the parties, in I.A. No. 22998 of 1985 in O.S. No. 7462 of 1983, the XV Assistant Judge, City Civil Court, Madras, by his order dated 27.2.1986 impleaded "Srirangam Srimad Andavan Ashramam by its present Head of the Instituion Sri Vedantha Rama-nuja Maha Desikan, Peria Ashramam, Srirangam1. Aggrieved by the said order, the proposed party has filed C.R.P. No. 1353 of 1986. Equally, the plaintiffs have also filed C.R.P. No. 1322 of 1986. Both the plaintiffs and the proposed party contend that the impleading of Srirangam Srimad Andavan Ashramam is unnecessary and uncalled for and that the order of the learned Judge is erroneous and contrary to law.

3. Mr. M. Srinivasan, Learned Counsel appearing for the plaintiffs/petitioners in C.R.P. No. 1322 of 1986 contends before me, that it is for the plaintiffs to choose a person Order impleading as a party, since as do minus litis they are entitled to implead such persons against whom they seek relief and it is not for the defendant to file such an application. In this case, the proposed party is an unnecessary party and the impugned order of the learned Judge is perverse and contrary to law. Equally, Mr. N.S. Varadachari, Learned Counsel appearing for the proposed party in C.R.P. No. 1353 of 1986 contends that the impleading of the proposed party as the 2nd defendant in the suit is unnecessary and it uncalled for, since it is a dispute between the plaintiffs and the defendant. Thus, both the Learned Counsel appearing for the plaintiffs and the impleaded defendant contend, that the impugned order is unjust and that the impleading of the proposed party as a defendant, as it has been done by the trial Court, is unnecessary.

4. On the other hand, Mr. B.T. Seshadri, Learned Counsel appearing for the caveator/defendant contends that for the proper disposal and effective adjudication of the suit pending before the Court, the proposed party is a necessary party and the trial Court on the facts of the case has jurisdiction and has rightly impleaded the proposed party to the suit.

5. I have gone through the impugned order and also heard the arguments of the respective counsel appearing for the parties. I am of the view that no doubt it is for the plaintiffs as do minus litis to implead a person as a party to the suit and it is not for the defendant to say that a particular person should be impleaded as a party. But the question, on the facts and circumstances of the case, is, whether

the proposed party, who has been impleaded in the suit, is for the proper and effective disposal of the case, is a necessary party for the disposal of the lis.

6. In this case, I find that the plaintiffs came forward with the suit that the defendant is not entitled to use the term "Srimad Andavan¹". On the other hand, the defendant contends that he is entitled to use the term "Srimad Andavan". In view of the dispute between the parties, the Head of the Institution" has to be present at the time of the disposal of the case. It is this that has weighed with the trial Court to implead the Head of the Institution as a party to the suit. Mr. B.T. Seshadri, Learned Counsel appearing for the defendant has brought to, my notice the principles laid down in Razia Begum Vs. Sahebzadi Anwar Begum and Others, , which are as follows:

(1) That the question of addition of parties under Rule 10 of Order I 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; but in some cases, it may raise controversies as to the power of the Court in contradistinction to its inherent jurisdiction, or in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code.

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation.

(3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the Court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

7. In view of the aforesaid principles laid down by the Supreme Court, I am of the view that the impugned order does not suffer from any illegality.

8. That apart normally, as pointed out by Mr. Srinivasan, Learned Counsel appearing for the petitioners in C.R.P. No. 1322 of 1986, one can be impleaded as a party against the wishes of the plaintiffs. But the question of addition of parties is not one of initial jurisdiction of the Court, but of judicial discretion, which has to be examined carefully, as pointed by the Supreme Court, on the facts and circumstances of a particular case placed before it. A necessary party is a party whose addition is absolutely necessary in order to enable the Court to adjudicate effectively and completely, the matter in controversy between the parties. In this case, there is a dispute between the disciples as to who should have the title of "Srimad Andavan", which requires the presence of the Head of the Institution and the presence of the proposed defendant is necessary for the proper adjudication as a necessary party.

9. In other words, under Order 1, Rule 10, C.P.C., the Court is competent on the

facts and circumstances of the case, to join any person as plaintiff or defendant, whose presence before Court is necessary in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit; but at the same time taking into consideration that the scope and character of the suit does not change by the addition of a new party in order to enable he or she or they to litigate their own independent claim.

10. In this case, I may state, that the impleading of the Head of the Institution by the trial Court cannot be said as unjust or irregular or contrary to law. In other words, what has to be seen is, whether the addition of a party is consistent with the scope of the enquiry necessitated in the suit and whether the presence of such party is necessary to effectually dispose of the controversy in the pending Us. As stated already, the dispute is between the plaintiffs and the defendant, as to who should have the title "Srimad Andavan" and for the proper and effective disposal of the lis and in the interests of justice, I am of the view that the impleading of the proposed party as a necessary party is just and reasonable.

11. With these observations, these civil revision petitions are dismissed.