

(1986) 11 MAD CK 0022
In the Madras High Court

Balasubramaniam

APPELLANT

Vs

S. Ameer and Another

RESPONDENT

Date of Decision : 28-11-1986

Acts Referred:

Citation : (1987) 2 MLJ 326

Hon'ble Judges : Sengottuvelan, J

Bench : Division Bench

Judgement

Sengottuvelan, J.—The above civil revision petitions are filed by the proposed defendant in the suit O.S. No. 418 of 1986 on the file of the

Principal Subordinate Judge, Pondicherry, challenging the legality and correctness of the orders passed by the Principal Subordinate Judge,

Pondicherry in I.A. Nos. 1875 and 1877 of 1986.

2. The facts of the case are briefly as follows:

The first respondent herein as plaintiff filed the suit O.S. No. 418 of 1986 for recovery of a sum of Rs. 50,000 which was alleged to have been

advanced by the first respondent to the second respondent for the purchase of the rights of the picture called Raja Rishi. The suit is one for

recovery of simple money claim filed; by the first respondent against the second respondent.

3. The first respondent subsequently filed I.A. No. 1757 of 1986 under Order 38, Rule 5, C.P.C. for attachment of prints of the pictures Raja

Rishi. Meendum Pallavi and Solai Pushpangal before judgment on the allegation that the said pictures belong to the second respondent herein and

the second respondent is trying to part with the same to defeat the money claim of the first respondent herein. The lower Court ordered interim

attachment in the said application. The first respondent also filed another application I.A. No. 1758 of 1986 for appointment of a Commissioner to seize the prints of the above said three pictures in the hands of the third party, the petitioner herein, on the ground that the prints really belong to the second respondent. The petitioner herein resisted the Commissioner taking possession of the prints of the pictures and also resisted effecting interim attachment on the ground that he had become the purchaser of the said pictures as per the agreement dated 23.5.1986. In view of the obstruction by the revision petitioner herein the attachment could not be effected and the Commissioner could not take possession of the prints as ordered by the lower Court.

4. The first respondent herein, viz., the plaintiff, subsequently filed an application I.A. No. 1875 of 1986 for appointment of another Commissioner to secure the prints of the said pictures and another application I.A. No. 1877 of 1986 to implead the revision petitioner as the second, defendant in the suit. Learned Subordinate Judge allowed both the applications on the ground that the impleading of the revision petitioner is necessary for an effective adjudication of the matters in dispute and also directed the Commissioner to seize the prints of the pictures mentioned above. The above civil revision petitions are filed challenging the legality and correctness of the order passed by the learned Subordinate Judge.

5. The points for determination in the above civil revision petitions are as follows:

1. Whether the impleading of the revision petitioner is necessary for an effective adjudication of the matters in dispute?

2. Whether a Commissioner can be appointed to seize the print of the abovementioned pictures in the possession of the revision petitioner?

6. The Court may at any stage of the proceedings direct a party to be impleaded if such a party is necessary for an effective adjudication of the matters in dispute. Order 1, Rule 10(2), C.P.C., reads as follows:

10(2) The Court may at any stage of the proceedings, either upon or without application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable

the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

We have to consider whether the revision petitioner is a necessary party in order to have an effective adjudication in respect of the suit claim. The

suit claim is one for money lent by the first respondent to the second respondent. There is no charge for the money so advanced over the

abovesaid pictures. The contention of the first respondent is that by means of a collusive transaction between the second respondent and the

revision petitioner the attachment of the prints of the abovesaid pictures is effectively prevented and in order to get over the obstructive tactics on

the part of the revision petitioner he will have to be impleaded as a party defendant to the suit. This contention will merit acceptance only if the

prints of the abovesaid pictures are the subjectmatter of the suit. But the suit relates only to a simple money claim and the revision petitioner has

nothing to do with the suit claim. The further contention is that when the revision petitioner is obstructing the attachment the first respondent is left

with no other remedy except to file the application to implead the revision petitioner as a party to the suit. This contention also cannot be upheld in

view of the fact the first respondent has got his own remedies to effect attachment in spite of protest by any third party. By no stretch of

imagination it can be said that the revision petitioner is a necessary party to the above suit in order to have an effective adjudication of the matters

in dispute. In the case reported in Annapoorani Aramal Vs. Jayavelu Mudaliar and Another, , it has been held that a purchaser of an item of

property from a vendee, who himself purchased that item from a party to a suit for partition, after a preliminary decree was passed cannot be

impleaded as a party to the proceedings under Order 1, Rule 10, C.P.C. Neither the purchaser nor his predecessor-in-title had any interest in any

item of the suit property on the date of the suit and hence the purchaser is not a necessary party in the suit for a complete and final adjudication and

settlement of rights and claims. I am in entire agreement with the above view expressed by Natarajan J., as he then was. In an unreported decision

of this Court in Kuppu Kannu v. B. Pavunammal C.R.P. Nos. 4108, 4109, 4110 and 4111 of 1985, dt. 17.11.1986 Sathiadev J., held that where

a third party had put forward the claim of purchase of property without the knowledge of attachment, it will be all the more beneficial to the third

party, if at that stage of the matter itself, a decision can be arrived at whether the third party has purchased the property with or without knowledge

of attachment and such a course will prevent other litigation being instituted in the event of plaintiff securing a decree. That was a case where

attachment was effected and the third party put forth a claim that he had purchased the property even before the attachment. Such a case will give

rise to proceedings only under Order 21, Rule 58, C.P.C. In so far as an application under Order 1, Rule 10(2), C.P.C., is concerned the only

criterion is whether the presence of the party sought to be impleaded is necessary for an effective adjudication of the matters in dispute. Sathiadev,

J., has not even held that the presence of the third party is necessary in order to have an effective adjudication of the matters indispute. Hence the

above unreported decision cannot be considered to be one laying down the law that can be followed in the present case. Under the circumstance

the contention of the first respondent that the revision petitioner is a necessary party to the suit will have to be negatived. However, the first

respondent is at liberty to institute appropriate proceedings to safeguard his rights on the basis of the case put forward by him.

7. The next question to be determined is whether a Commissioner can be appointed to seize the prints of the above-said pictures. The only remedy

available to the first respondent is to attach the prints of the pictures if they belong to the second respondent. No further remedy is available to the

first respondent in law. Hence the remedy by way of appointment of a Commissioner to seize the prints of the pictures mentioned above is not

available to the first respondent. But he is at liberty to take appropriate proceedings before the lower Court to effect the attachment of the pictures.

In view of the above reasonings the civil revision petitions are allowed. There will be no order as to costs.