
(2009) 04 MAD CK 0550

In the Madras High Court

Case No : C.R.P. (P.D.) No. 3748 of 2008 and M.P. No. 1 of 2008

Chennai Jananayaga Madhar Sangam

APPELLANT

Vs

S.R. Naidu and Mrs. Vimala

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Criminal Procedure Code, 1973 (CrPC) — Section 191

Transfer of Property Act, 1882 — Section 52

Citation : (2009) 4 LW 264

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : T.P. Sekar, for the Appellant; K.P. Chandrasekaran, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The petitioner filed Interlocutory Application under Order 1 Rule 10(2) of C.P.C. to implead the Sangam as second defendant in the suit filed by the first respondent. In the affidavit filed by the petitioner, the following averments are found:

1. (i) The first respondent filed suit for Permanent Injunction restraining the second respondent herein from interfering with the peaceful possession and enjoyment of the suit property as if he is an permissive occupant of 3rd floor of suit schedule property and tenant in respect of first floor of the suit property. The suit property belonged to second respondent and she executed a registered Gift Deed dated 6.6.2008 and conveyed the ground floor of the suit property to the petitioner and in pursuance of the same the petitioner took possession and enjoying the same with absolute right without any hindrance. The person who is not in possession of the property is not entitled to seek relief of permanent injunction.

1.(ii) First respondent filed R.C.O.P. No. 1342 of 2007 on the file of XIV Small

Causes Judge, Chennai to permit him to deposit monthly rents before court in the capacity of tenant and after full fledged trial, the said court dismissed R.C.O.P. on the ground that there is no tenant/landlord relationship between the first respondent and second respondent and the first respondent preferred appeal in R.C.A. No. 107 of 2008 which is pending before IV Small Causes Court, Chennai. The petitioner is the owner of the ground floor and in possession of the property and hence the petitioner has to be impleaded as second defendant in the suit.

2. In the counter filed by the first respondent it is alleged as under:

When this respondent filed R.C.O.P. for deposit of rent in the Court, the second respondent has contended that the first respondent was not in possession, and she alone is in possession, but while filing the counter in R.C.O.P., it is categorically admitted that she is in possession as a licensee. Therefore, there could be a legal inference that the version of the petitioner is false and also perjury and hence the petitioner is liable to be prosecuted u/s 191(b) r/w Section 340 of Cr.P.C. It is a clear case of collusion between the petitioner and 2nd respondent. The suit for injunction filed by this respondent is in respect of his "right in personam" against 2nd respondent alone. The petitioner's Sangam is not registered under Co-operative Societies Act and it cannot maintain any suit or proceeding before the Court of law. Hence the petition has to be dismissed.

3. The 2nd respondent filed memo stating that she has no objection to allow I.A. No. 10693 of 2008 filed by the petitioner.

4. The learned IV Assistant Judge, City Civil Court, Chennai, dismissed the application by observing that if the petitioner claiming ownership in the property, it has to work out remedy through a separate proceeding, since the present suit is one for permanent injunction against the second respondent and hence there is no ground to allow the application.

5. The suit was filed on 06.08.2007. But the gift deed in favour of this petitioner executed by the second respondent was on 6.6.2008, i.e., after the institution of the suit. In this regard, it has to be seen whether a purchaser "Pendente Lite" can be impleaded as a party to the suit and it has to be incidentally found whether the petitioner is a necessary party to the suit for complete adjudication of the case. Hence, this Court need not go into the merits of the suit which is for trial Court to discuss and to reach a conclusion.

6. Mr.T.P. Sekar, learned Counsel for the petitioner would submit that inasmuch as the title and right over the property covered by the Gift Deed solely conveyed to the petitioner, the petitioner is a necessary party to the suit and in its presence the adjudication has to be made, if not, it would lead to multiplicity of proceedings.

7. Per contra, Mr.K.P. Chandrasekaran, learned Counsel for the first respondent would submit that the transaction between the second respondent and the

petitioner is hit by "lis pendens" and the petitioner is not at all a necessary party to the suit and that since it is a suit for permanent injunction, the title of the petitioner need not be decided in the present suit and hence the petition has to be rejected.

8. Learned Counsel for the petitioner in support of his contention placed reliance upon a decision of this Court in 2002 3 L.W. 472 R. Anitha and Ors. v. Ramakrishnan and Ors. wherein it is held as follows:

10. Needless to say, the jurisdiction vested on the Court under Order 1, Rule 10 of the CPC to implead the third party has to be exercised judiciously. In the instant case, admittedly the proposed parties have purchased a part of the property even before the filing of the suit, but omitted to be added as parties, and hence, they have to be necessarily added as parties to the final decree proceedings, without whose presence the issues between the parties could not be effectually and completely adjudicated upon.

9. He also relied upon another decision of this Court in Duraikannu Padayachi Vs. Meera, in which when the court dealt with genuineness of a will, has found that all the persons interested in the property should be impleaded as parties, which becomes imperative on the part of the heirs of "C" to have jointly filed the suit for getting the right of reconveyance exercised in their favour.

10. In yet another decision of this Court reported in 2002 2 L.W.408 Tirunelveli Junction High Road, Kemalamuthu Chararities Kattida Vadagaitharkal Sangam through its Secretary v. Sethuramalingsm and Ors. it is observed that if the petitioner had genuine interest in the suit property and any decision taken in his absence without giving any opportunity would affect his fortune in the suit property and therefore thought it fit to implead him as party/defendant since he is necessary party to the suit.

11. Learned Counsel for the first respondent garnered support from a decision of the Supreme Court in Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, in which the Supreme Court had occasion to deal with Order 1 Rule 10 , Order 6 Rule 17 of C.P.C. and also Section 52 of the Transfer of Property Act and formulated principles which are guiding factors in a matter before this Court for better determination of the matter in issue. The Apex Court has laid down as follows:

9. It is not disputed that the present petitioner purchased the property during pendency of the suit and without seeking leave of the Court as required by Section 52 of the Transfer of Property Act. The petitioner being a transferee pendente lite without leave of the Court cannot, as of right, seek impleadment as a party in the suits which are long pending since 1983. It is true that when the application for joinder based on transfer pendente lite is made, the transferee should ordinarily be joined as party to enable him to protect his interest. But to instant case, the trial Court has assigned cogent reasons for rejecting such joinder stating that the suit is long pending since 1983 and prima facie the action

of the alienation does not appear to be bona fide. The trial Court saw an attempt on the part of the petitioner to complicate and delay the pending suits.

10. ...

It would therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the Court. Admittedly, the authority or order of the Court had not been obtained for alienation of those properties . Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents "cannot be considered to be either necessary or proper parties to the suit.

12. Even though the Supreme Court was of the view that ordinarily a person who purchased a property may be joined as a party to enable him to protect his interest, still Section 52 of T.P. Act puts a legal embargo on his recognition in entering to the suit when the transaction was without the order or authority of the Court. If the purchaser had not informed the Court and obtained necessary sanction from the court, while lis is pending, the transaction is hit by lis pendens and the party property is neither necessary nor a proper party to the suit.

13. This petitioner got transferred of the property pending the trial of the suit. Hence, the said transaction is purely governed by Section 52 of Transfer of Property Act. This Court in an identical situation while dealing with the right of a subsequent purchaser during the pendency of the suit, under Order 22 Rule 10 of C.P.C. and Section 52 of T.P. Act, decided a case reported in Rajalakshmi Sivakumar Vs. N. Rajavelu and Others, wherein after following the dictums laid down by the Apex Court, I have expressed view that the petitioner who is transferee pendente lite could not herself get impleaded in the suit and whatever the adjudication her transferor receives in the decree shall govern her.

14. Following the ratio laid down in the decision of the Supreme Court, it is held that since there is no pleading nor any material produced before this Court to show that the petitioner obtained earlier sanction of the court to purchase the property during the pendency of the suit. The petitioner is neither necessary nor a proper party to the suit and the order of the Court below in this regard does not warrant any interference by this Court, which deserves to be confirmed and it is accordingly confirmed.

14. In fine, the Civil Revision Petition is dismissed. No costs. Connected M.P. is closed.