

(1940) 11 MAD CK 0049
In the Madras High Court

Chithuri Ramamohana Rao

APPELLANT

Vs

Peteti Raghavamma and Others

RESPONDENT

Date of Decision : 19-11-1940

Acts Referred:

Citation : (1941) 53 LW 392 : (1941) 1 MLJ 471

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—These are petitions to revise the orders of the District Judge of Kistna dated the 30th March, 19-39 allowing two persons to be impleaded as respondents in an appeal which had come on for hearing and in which an objection had been taken by the only respondent in the appeal till then that the appeal itself was liable to be dismissed in limine in view of the omission to implead one of those persons as a respondent, namely, the second defendant in the suit. The application to implead the second defendant was made by the appellants. The other application was made by the third defendant herself to be impleaded as a respondent. Both the applications were allowed by the Court below in very short orders which merely were to the effect that the persons in question were to be added as respondents subject to objections that might be made regarding amendment of the grounds of appeal.

2. So far as C. R. P. No. 746 of 1939 is concerned, it relates to the application by the third defendant to be made a respondent. In that petition there has not been very serious opposition, because it is impossible to say that the third defendant has any interest in coming on record in an appeal while the trial Court's decree was entirely in her favour and the suit was dismissed by the trial Court as against her. The suit was to declare that two alienations made by the third defendant in favour of the second defendant are not binding on the plaintiffs and the 4th defendant after the lifetime of the 3rd defendant, the third defendant being the mother of the plaintiffs and the fourth defendant being a sister of the plaintiffs, the plaintiffs themselves being sisters. The second defendant is the

husband of the fourth defendant and both the alienations that were sought to be declared not binding were alienations made in his favour by his mother-in-law. The decree of the trial Court was that the suit is dismissed. In these circumstances it is difficult to understand what possible interest the third defendant could have in asking the appellate Court to implead her as a party respondent when the appellants themselves did not implead her as a respondent and did not even subsequently apply to implead her. No interest has been established and the application should have been dismissed because it did not comply with the conditions of Order 41, Rule 20, Civil Procedure Code. The order of the lower Court directing that the third defendant be impleaded as a respondent is accordingly set aside and the petitioner in this petition (C.R.P. No. 746 of 1939) will have his costs in the petition from the third defendant (respondent).

3. As regards the other civil revision petition it is contended that the non-impleading of the second defendant in the appeal originally was due to a mistake. It is alleged in the affidavit filed in support of the application that the second defendant was not added originally as a respondent because it was believed that as he was ex parte in the trial Court his presence might not be necessary in the appeal. It was also mentioned that the omission to add the second defendant as a respondent was due to a bona fide mistake on the part of the appellants, the bona fide mistake being that because there was a subsequent sale of the property by the second defendant to, the first defendant who at the time of the suit was only a mortgagee under the second defendant, it was considered that the first defendant having become the owner of the property could sufficiently represent the property and it was not necessary to make the second defendant also a party. The alleged mistake was denied in the counter affidavit and it is abundantly clear that there could not have been any bona fide mistake. The non-impleading of the second defendant was deliberate. - The Memorandum of appeal was returned by the District Judge and the appellants were asked to state why all the parties to the proceedings in the lower Court had not been added as parties in the appeal. And the reply to this query by the appellants' advocate was that defendants 2 to 4 are not necessary parties as no relief is claimed against them in the plaint and as they were ex parte and it was the first defendant who was affected by the decree. In other words, there is a distinct statement by the advocate for the appellants that defendants 2 to 4 were not joined because they were not necessary parties and because no relief had been claimed against them in the plaint and also because they were ex parte. It is not shown how these statements were made owing to any mistake on the part of the advocate. No affidavit by the advocate has been filed to show that he made any mistake. I have no doubt that in this case the non-impleading of the 2nd defendant in the first instance was deliberate and wilful and that the subsequent attempt made months after the appeal against him had become barred, was merely due to the fact that preliminary objection was raised at the hearing of the appeal that in the absence of the 2nd defendant the appeal could

not proceed. This is in my opinion a case which is covered by the decision of their Lordships of the Privy Council in Chockalingam Chetty v. Seethai Achi (1927) 6 Rang. 29 : 54 M.L.J. 88. The following observation in that case applies to the present case with all force:

Giving these words (the words in Order. 41, Rule 20, C. P. C) their natural meaning--and they cannot be disregarded--it seems impossible to say that in this case the defendants against whom these suits have been dismissed, and as against whom the right of appeal has become barred, are interested in the result of the appeal filed by the plaintiff against the other defendants.

4. So far as Order 41, Rule 33 CPC is concerned it is clear that the lower Court did not purport to act under the special powers provided therein, though it is mentioned among the several provisions in the preamble to the petition. The question whether the appeal is maintainable in the absence of the 2nd defendant is not a question that need be decided in this revision petition; that is a question to be decided by the Appellate Court when the appeal comes on for hearing. So far as the order which directs the impleading of the 2nd defendant as a party respondent is concerned, it seems to me that the order was made without jurisdiction because the conditions prescribed by law for impleading a party respondent were not satisfied. That order is therefore set aside and this petition is allowed with costs.