
(2008) 12 MAD CK 0278

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No. 1906 of 2008 and M.P. (MD) No. 1 of 2008

K. Chella Thangam and Others

APPELLANT

Vs

Jesintha Mary and D. Maria Arputham

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

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

Citation : (2008) 12 MAD CK 0278

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : C.K.M. appaji, for the Appellant; N. Krishnaveni, for Respondent 1 and K.P. Krishnadoss, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

S. Palanivelu, J.—The petitioners are the third parties to the suit in O.S. No. 369 of 2006, which is a suit for bare injunction filed by the first respondent against the second respondent before the Principal District Munsif Court, Padmanabhapuram. These petitioners have filed an application under Order 1, Rule 10 (2) CPC for impleading of parties by stating that they have already got some rights over the property. In the affidavit, they have stated that by means of document Nos. 412/1954, 1663/1968, 533/1986 and 5506/1960 of Sub-Registrar Office, Colachel, they are enjoying the suit properties as absolute owners and the defendant in the suit has no right over the properties and hence, they have to be impleaded as defendants 2 to 6 in this suit. Their impleadment would also avoid the multiplicity of proceedings. They are necessary parties to the suit.

2. In the counter filed by the plaintiff, the allegations in the affidavit are denied. It is further stated that the plaintiff had averred in the plaint that since the defendants attempted to disturb her possession, she filed the suit for permanent injunction and there is no cause of action against these petitioners.

3. The learned Principal District Munsif, Padmanabhapuram has dismissed the application by stating that the petition is a belated one and filed after the suit was posted in the special list for trial and there is no necessity to implead them as the parties to the suit.

4. The learned Counsel for the petitioners Mr. C.K.M.Appaji, would submit that the petitioners are the legal heirs of the purchasers from the original owner of the suit properties, whereas the plaintiff had purchased the properties from the assignee from a mortgagee of the suit properties from the original owner and hence, these petitioners are possessing better title. He further submits that on plaint allegations itself it could be known that these petitioners have semblance of rights in the properties. He also points out that the pleadings raised in the written statement go to the effect that the suit is bad for non-joinder of necessary parties and that this defendant's mother and legal heirs of his brothers are the proper and necessary parties in the suit properties. He says that the mother and legal heirs of the brother are the petitioners herein and without their presence, no effective adjudication could be made in the suit.

5. Repelling those contentions, learned Counsel for the first respondent/plaintiff Ms. N.Krishnaveni would submit that merely because the petitioners filed their application for impleading them as parties, there is no need for the Court to add them as parties, that the plaintiff has not levelled any allegations against these petitioners, shown any cause of action as against them, that they are not at all necessary parties for the final adjudication of the case and that their presence would in no way assist the Court to reach a definite conclusion. She further states that the petitioners could not be brought under any category of either proper parties or necessary parties, that the petition is a vexatious one to drag on the proceedings and it could not be also stated that by their non-impleadment, there would be multiplicity of proceedings.

6. She placed reliance upon a decision of this Court reported in Somasundaram Chettiar and others Vs. Balasubramanian, , in which this Court has held that a person having relevant evidence may be necessary witness and not proper party in the suit for bare injunction and the third party claiming title is not the proper party. The learned Judge has also followed a decision of the Hon"ble Supreme Court in Ramesh Hiranand Kundanand v. Municipal Corporation of Greater Bombay and Ors. reported in 1992 TLNJ(SC) 14. He also draws attention of this Court to another decision of this Court reported in S. Krishnan Vs. Rathinavel Naicker and Others, in which the learned Judge has formulated as many as four guidelines and held that if the party satisfies any one or more of the tests laid down, then he can be impleaded, however, such exercise is only discretionary and the tests are merely illustrative. The following are the tests as enumerated in the said decision:

Tests to be applied for determining right of party to implead another in pending suit or proceeding would largely be (a) no effective and complete adjudication can be made in absence of such party even if no relief is claimed against him (b)

when there is cause of action against party proposed to be impleaded (c) when relief sought in suit or other proceedings is likely to be made⁴ binding on proposed party (d) when proposed party is likely to be affected adversely by ultimate outcome of such proceeding - Person satisfying any one or more of the tests laid down above can be impleaded but such exercise is discretionary and test are merely illustrative.

7. Conversely, the learned Counsel for the petitioners Mr. C.K.M.Appaji, would place reliance upon a decision of this Court reported in *Kandasamy and Venkatesh Vs. M. Palanisamy, M. Sarojini and Soundappa Chetty*, in which it is held that a necessary party is one without whom no order can be made effectively and the proper party is one whose presence is necessary for a complete and final decision of the question involved in the proceeding. An identical view has been echoed in the decision of this Court reported in *L.S. Sadapopan (Died) and Another Vs. K.S. Sabarinathan*, .

8. A Larger Bench of the Hon''ble Supreme Court in *Savitri Devi Vs. District Judge, Gorakhpur and Others*, has held that the purchasers of the properties covered by this suit are necessary parties to the suit and their impleadment is necessary for deciding questions whether sales were effected in contempt and disregard of injunction and whether purchasers were bona fide transferees and by impleading them multiplicity of suit can be avoided.

9. It is further held that Order 1, Rule 10 CPC enables the Court to add any person as party at any stage of the proceedings if the person, whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. In yet another decision of this Court reported in 2003 4 L.W. 451 P.R. *Nallappa v. P.K. Srinivas and Ors.* it is observed that even if a person is found to have had any semblance of right, it is proper to implead him as a party to the suit or proceeding and adequate opportunity to be afforded for him to exhaust his remedy, so that a binding decision could be passed against all parties concerned.

11. In the facts and circumstances prevailing in this case, this Court is following the decision of the Hon''ble Supreme Court in *Savitri Devi's* case (*supra*) wherein Their Lordships have held that in order to avoid the multiplicity of proceedings and to enable the Court to effectively and completely adjudicate the issue, the parties who are having rights in the properties, have to be impleaded.

12. In such view of this matter, since these petitioners have come to the Court with a plea that they have got some interest over the suit properties, they have to be necessarily impleaded in the suit, so that effective and complete adjudication of the rights of the parties can be arrived at finally. It is no doubt true that the petition has been brought to the Court after a long period, but that

cannot constitute a valid ground for rejection of the application.

13. In the light of the afore-said observations and discussions, the order passed by the Court below does not stand which is to be set aside and it is accordingly set aside.

14. In fine, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.