
(2008) 12 MAD CK 0323

In the Madras High Court

Case No : C.R.P. (PD) No. 4101 of 2008 and M.P. No. 1 of 2008

Kanaka @ Kanakambal and Others

APPELLANT

Vs

Ethuraju and Others

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

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

Citation : (2008) 12 MAD CK 0323

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Mala, for the Appellant;

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The revision petitioners/Plaintiffs have projected the civil revision petition before this Court as against the order dated 09.04.2008 in I.A. No. 269 of 2007 in O.S. No. 70 of 2006 passed by the Principal sub Judge, Tindivanam in dismissing the application filed by the revision petitioners under Order 1 Rule 10 of C.P.C. The trial Court while passing orders in the I.A. has inter alia opined that the proposed parties are necessary parties to the case and any decision to be rendered in the suit will bind the first defendant and this in turn will bind the respondents 2 to 6 therein and resultantly, dismissed the application.

2. The learned Counsel for the revision petitioners urges before this Court that the order of the trial court in dismissing the I.A. is not correct in the eye of law and that the trial court has erred in coming to the conclusion that the impleading application has been filed with a view to protract the proceedings, overlooking the fact that the application was filed within 4 months for the purported sale and further in a declaratory suit, all parties claiming title to the property are proper and necessary parties and this aspect of the matter has been appreciated by the trial court in proper perspective and therefore, prays for allowing the civil revision petition in furtherance of the substantial cause of justice.

3. The pith and substance of the contention of the learned Counsel for the revision petitioners/Plaintiffs is that the proposed respondents 2 to 6 having purchased the suit property from the first defendant are necessary and proper parties since they claim right in present and therefore, the trial court ought to have allowed the I.A. in the interest of justice to avoid plurality of proceedings.

4. The learned Counsel for the revision petitioner cites a decision reported in AIR 1999 SCW 597, Savitri Devi v. District Judge, Gorakhpur wherein it is observed that

Purchasers are necessary parties to the suit and their impleadment is necessary for deciding questions whether sales were committed committed in contempt and disregard of injunction and whether purchasers were bona fide transferees and that the multiplicity of suits can be avoided.

5. It is to be noted that the power to implead necessary parties is a wide one and in this regard, the Court of law has got wide discretion. Though in a civil suit, the Plaintiff is the dominus lit is yet in the considered opinion of this Court, the same is not an absolute rule. The test for a court of law is to find out whether the persons required to be impleaded are necessary proper parties and without their presence, the effective determination of controversies in the suit cannot be decided for an effective and binding decision between the parties. Admittedly, the first defendant has sold the property to the proposed parties. The revision petitioners/Plaintiffs have filed a suit against the defendant who has sold the property to the proposed parties. Therefore, in effect the decisions to be arrived at in regard to the conduct of the main case by the parties will as a logical corollary which binds the first defendant will naturally also bind the proposed parties and therefore, they need not be arrayed as parties to the suit.

6. Therefore, in the considered opinion of this Court that they are neither necessary parties nor proper parties and in fact, without their presence, the trial court can dispose of the suit completely and comprehensively and in that view of the matter, the civil revision petition is dismissed.

7. In the result, the civil revision petition is dismissed leaving parties to bear their own costs. The order passed by the trial court is affirmed for the reasons assigned by this Court in this revision. It is informed that the suit is pending part heard and equitable and prudent course. This Court directs the trial court to dispose of the suit within a period of 4 months from the date of receipt of a copy of this order. The connected miscellaneous petition is closed.