

(2002) 10 MAD CK 0086

In the Madras High Court

Case No : C.R.P. No. 1818 of 2001 and C.M.P. No. 10004 of 2001

Kasthuri

APPELLANT

Vs

Iyyamperumal, Saravanan, Ramayee, Angamma, T.S.
Rajathiammal, T.S. Rangarajan, Hema Bai, T.S. Bogeswari,
T.S. Sri Nagesh, T.S. Varalakshmi and T.S. Sundararajan

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3, Order 1 Rule 5

Citation : (2003) 2 LW 547

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : G. Masilamani for G.M. Mani Associates, for the Appellant; A. Subramanian, for R1 and No appearance for R2 to R11, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Kasturi Vs. Iyyamperumal and Others, AIR 2005 SC 2813 : (2005) 2 CTC 676 : (2005) 4 JT 565 : (2005) 141 PLR 326 : (2005) 6 SCC 733 : (2005) 3 SCR 864

K. Gnanaprakasam, J.—The plaintiff in O.S. No. 159/1999 before the Sub-Court, Pondicherry, is the revision petitioner herein.

2. The first respondent has filed an application under Order 1 Rule 10(2) C.P.C. to implead him as the third defendant and also to implead respondents 4 to 11 as defendants 4 to 11 in the suit and the said application was allowed by the trial Court by order dated 20.12.2000 in I.A. No. 21245/99. Aggrieved by the said order, the Plaintiff preferred this Civil Revision Petition.

3. The Plaintiff filed the suit for specific performance of the sale, based upon the agreement dated 30.1.1996, executed by the first defendant as the Power agent of the second defendant to the plaintiff. The plaintiff also prayed for alternative

relief for the return of the advance amount together with interest and further prayed that the second defendant to put the plaintiff into possession of the suit property and for other reliefs.

4. The first respondent herein who is the petitioner in I.A. No. 2124/99 had stated in the affidavit filed in support of the petition that he and the respondents 4 to 11 are the legal heirs of his elder brother, deceased Chockanathan and are entitled to the suit property. His father Thiruvarasan had purchased the property which is the subject matter of the suit, from one Ponnusamy Naicker under the Sale deed dated 19.3.1953 and the said Sale deed contains 5 items of properties. Out of the said 5 items, item 1 and 2 are the suit properties in this suit. It is further stated that from the date of purchase of the said properties, his father Thiruvarasan was in peaceful possession and enjoyment of the property till his death on 1.5.1962 and thereafter he and the heirs of his elder brother have been in peaceful possession and enjoyment of the suit property. It is also stated that neither the second defendant nor the first defendant has got any manner of title to the suit property. Hence he wanted to implead himself with others as they are necessary and proper parties to the suit.

5. The plaintiff filed a counter denying the claim made by the proposed parties to the suit property. They also denied the possession of the suit property by the proposed parties. It is also stated that the suit is one to enforce the contract and to specifically perform the same and hence there is no scope to go into the title or right of the parties and that the Court is not going to adjudicate the question of right and title over the suit property, which is quite alien to the issues involved in the suit. It is also stated that the plaintiff has not claimed any relief against the proposed parties.

6. The trial Court had observed that the plaintiff who is seeking for the relief of specific performance of sale also pray for possession of the suit property and the first respondent and respondents 4 to 11 are claiming that they are in possession of the suit property and in view of the same, the proposed parties are necessary parties to the suit and allowed the petition which is under challenge herein.

7. Mr. G. Masilamani, learned Senior Counsel for the petitioners, would contend that the plaintiffs have not sought for any relief against the proposed parties and therefore they are neither necessary parties nor proper parties for the adjudication of the suit. It is also further contended that the plaintiff is a dominus litus and therefore cannot be forced to join the proposed parties as defendants. The addition of the proposed parties would enlarge the issue in the suit and therefore they are not necessary parties to the suit. It is also argued that the Court cannot direct addition of parties against the wishes of the plaintiff, who cannot be compelled to proceed against the persons against whom he does not claim any relief.

8. On the contrary, learned counsel for the respondents/proposed parties would submit that though the plaintiff does not claim any relief against the proposed

parties, they are necessary and proper parties to the suit for the effective and complete adjudication of the suit. No doubt the plaintiff is a dominus litis and he is not bound to sue against every possible adverse claim in the suit, but however when the respondent had made out a case that they are necessary and proper parties to the suit, the plaintiff should implead them as the defendants to avoid multiplicity of proceeding and by adding them as parties, no prejudice would be caused to the plaintiff also. It is further submitted that the plaintiff cannot also be allowed/permitted to get a decree, behind the back of the persons, who are having same subsisting right in the properties.

9. Now let us consider whether the respondents/proposed parties are necessary and proper parties to the suit and have to be joined as defendants. Order 1 Rule 3 C.P.C. states about the persons who may be joined as defendants and it reads thus, "all persons may be joined in one suit as defendants where - (a) any right to relief in respect of, or arise out of, the same act or transaction or series of acts or transactions is alleged to exist against such person, whether jointly, severally or in the alternative, and (b) if separate suits were brought against such persons, any common question of law or fact would arise". This provision is intended to avoid multiplicity of suits. Order 1 Rule 5 C.P.C states that "it shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him". By this Section, it is manifestly clear that every defendants need not have interest in respect of the claim made by the plaintiff. In other words, it would suffice if one or more defendants are interested in any one of the relief claimed by the plaintiff. In the present suit, the plaintiff has claimed not only specific performance of the contract but also delivery of possession of the suit property. The proposed parties contended that they are the owners and in possession of the suit property, and thereby they have justified that they are necessary and proper parties to the suit.

10. Now, we will examine Order 1 Rule 10 C.P.C. which states that "Court may at any stage of the proceedings, either upon or without the 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".

11. We are interested in the second part of the Rule (emphasis given by the Court) i.e., the persons whose presence before the Court are necessary to enable the Court to decide the matter effectually and completely. According to the plaintiff, the defendants are in possession of the suit property and he is seeking recovery of possession from the defendants. On going through the plaint, it is made out that the first defendant is only a Power of Attorney Agent of the second defendant and it is also made out that the second defendant had already cancelled Power of Attorney by Deed of Revocation dated 7.6.1996. The suit has

been filed in the month of January 1999, but however by way of abundant caution, the plaintiff has impleaded the second defendant who has given Power of Attorney to the first defendant.

12. It is the specific case of the proposed party that the petitioner's father Thiruvvarasan had purchased the suit property among other properties under Sale Deed dated 9.3.1953 and he and other respondents are in possession and enjoyment of the suit property. Even assuming that the plaintiff would get a decree in the suit, necessarily he has to take steps for recovery of possession of the suit property from the defendants/proposed parties. At that time the possession sought for by the plaintiff would be resisted/objected to by the proposed parties. Of course the remedy is always open and available to the proposed parties to resist the said action as and when the plaintiff comes forward with an application to take possession of the suit property but one does not know when it will happen. Now that the proposed parties, having come to know that the plaintiff has filed a suit for specific performance of the sale of the suit property and for possession, they have filed the application at the earliest point of time and they are also contending that they are in possession of the property, and thereby they justify that they are necessary and proper parties to the suit.

13. Now the question is who is necessary and proper party to the suit. This is answered by the Supreme Court in Ramesh Hiranand Kundanand Vs. Municipal Corporation of Greater Bombay and others 1992 T.N.L.J (S.C.) 14. The Supreme Court has dealt with Order 1 Rule 10(2) and had observed that "Sub-rule(2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touch stone of Order I, Rule 10 which provides that only a necessary or a property party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case".

14. Learned counsel for the revision petitioner relied upon the case of Krishan Lal and Others Vs. Tek Chand and Others, wherein it was held that "In a suit for specific performance of a contract of sale, a person who is not a party to the agreement for sale is neither a necessary nor a property party". The reasons given are that in a suit for specific performance the questions involved are the execution of the contract for sale, the readiness and willingness of the plaintiff to perform his part of contract etc. For settling these questions the presence of strangers is not necessary. It is not even proper. A person who claims title adverse to the parties to the contract is not a necessary or a proper party. No relief is sought against such persons. The addition of such a person would

enlarge the scope of the suit and change its nature and turn it into a title suit. It is further stated that unless a party proposed to be added has directly an interest in the controversy and its adjudication, the Court cannot invoke the power under Sub-rule 2 of Rule 10 of Order 1 C.P.C.

15. On the other hand, learned counsel for the respondents/proposed parties relied upon a case of Khaja Abdul Khader Vs. Mahabub Saheb and Others, wherein it was held " the intendment and object of this provision is to invest the Court with ample power and jurisdiction to strike out the name of any party improperly joined or to add any person who ought to have been joined or whose presence is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. It may also be noticed that this power may be exercised at any stage of the proceedings either upon or without the application of either party. This power must be exercised in the interest of justice and also to avoid multiplicity of suits in respect of all the questions relating to the subject matter of the suit. This provision must be liberally construed as the intendment being effective and complete adjudication and settlement of all the questions involved in the suit. ... Such wide interpretation warranted by the language employed by Order 1 rule 10(2), C.P.C would certainly enable the court to avoid conflicting decisions on the same questions and , at the same time, finally and effectually put an end to litigation respecting them. The framers of this rule must be held to have intended that all the material questions common to the parties to the suit to the third parties should be tried once and for and the court is invested to secure the aforesaid result with an ample judicious discretion to add parties which are necessary or proper in this regard".

16. Now, the question before us is whether the respondents are necessary and proper parties to the suit. As it has been already pointed out the plaintiff has filed the suit for specific performance of the contract of sale and also prayed for possession of the suit property but the respondents/proposed parties claims possession of the suit properties. Therefore, the issue with regard to the possession is common to the parties to the suit and to the third parties namely the proposed parties and the same can be settled in the suit itself. In order to avoid multiplicity of proceedings and for complete and effectual adjudication in respect of all the questions involved in the suit, this provision finds place in the C.P.C. As such liberal interpretation has got to be given in the rule and the narrow interpretation was not the intention of the framer of this Rule. The intendment and object of the provision as could be gathered from the language used therein appears to me to adopt a liberal construction to enable the court to determine all the questions relating to the subject matter of the suit arising not only between the parties to the suit but once and for all in the presence of all those parties whose presence is necessary or proper for an effective and final adjudication.

17. I am also of the view that no prejudice would be caused to the plaintiff by

adding these parties. If these parties are not added, at the time of taking possession of the property in the event of plaintiff succeeds in the suit, the proposed parties would resist and object taking up possession and in the said event both the parties have to approach the Court once again and hence the same could be avoided by impleading them as parties to the suit.

18. In the said circumstances, I am of the view that the respondent/proposed parties are necessary and proper parties in whose presence only the suit could be adjudicated effectually and completely and therefore, I do not propose to interfere with the order passed by the Court below.

19. In the result, the civil revision petition is dismissed. No costs. Consequently, C.M.P. No. 10004/2001 is closed.