
(2013) 08 MAD CK 0017

In the Madras High Court

Case No : C.R.P. (PD)(MD) No. 889 of 2011 and M.P. (MD) No. 1 of 2011

N. Anand

APPELLANT

Vs

N. Meena and Another

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2014) 1 CTC 882

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Judgement

P.R. Shivakumar, J.—The Defendant in the Original Suit in O.S. No. 41 of 2006 pending on the file of VI Additional District Judge

(erstwhile Fast Track Court No. 3, Madurai, now re-designated as IV Additional District Judge, Madurai) is the Petitioner in the present Revision

Petition. The Second Respondent is the mother of both the First Respondent and the Revision Petitioner. The mother and daughter, namely,

Second and First Respondents as Plaintiffs 1 & 2, filed the abovesaid Suit for Partition, claiming 2/3 share in the Suit properties. During the

pendency of the Suit, the mother, namely, the Second Respondent (First Plaintiff) lost interest in pursuing the Suit and filed a Memo, stating that

she was not interested in pursuing the Suit and thus, she had relinquished her part of the claim made in the Plaint. The First Respondent (Second

Plaintiff) felt that such a relinquishment by the First Plaintiff would make her claim not maintainable, if the Second Respondent is allowed to

continue as the First Plaintiff. The same was the reason why, she filed an Application I.A. No. 69 of 2011 praying for an order transposing the

Second Respondent (First Plaintiff) as Second Defendant in the Suit, so as to

enable the First Respondent/Second Plaintiff to pursue the Suit so far as her share is concerned. The Petition was resisted by the Revision Petitioner/Defendant on the ground that Order 23, Rule 1A, permits the transposition of a Defendant as a Plaintiff and it does not permit the transposition of a Plaintiff as a Defendant. The learned Trial Judge, after considering the rival submissions made on both sides, came to the conclusion that the subsequent stand taken by the Second Respondent/First Plaintiff to abandon her claim made in the Suit had necessitated the First Respondent/Second Plaintiff to seek the transposition of the Second Respondent/First Plaintiff as a Defendant and hence, the learned Trial Judge allowed the said Application. Questioning the correctness of the said order, the Revision Petitioner/Defendant has come forward with the present Civil Revision Petition, on various grounds set out in the grounds of Civil Revision Petition.

2. This Court heard the arguments advanced by Mr. K.K. Ramakrishnan, learned Counsel for the Revision Petitioner, by Mr. G. Prabhu Rajadurai, learned Counsel for the First Respondent/Second Plaintiff and by Mr. K. Guhan, learned Counsel for the Second Respondent/First Plaintiff, who was directed to be transposed as Second Defendant. The materials brought before this Court by the parties, have also been taken into consideration.

3. The main contention raised by the learned Counsel for the Revision Petitioner is that though the Suit was jointly filed by the Respondents 1 & 2, the abandonment of the relief sought for by the Second Respondent/First Plaintiff will not give a right to the First Respondent/Second Plaintiff to get the Second Respondent/First Plaintiff transposed as a Defendant, since Order 23, Rule 1A, contemplates only the transposition of a Defendant as a Plaintiff, when the Original Plaintiff loses interest in prosecuting the Suit. It is the further contention of the learned Counsel for the Petitioner that even Order 1, Rule 10(2), will not help the First Respondent/Second Plaintiff to get an Order for the transposition of the Second Respondent/First Plaintiff as a Defendant, as the said Order enables the Court to strike out a party's name from the array of parties either as a Plaintiff or as a Defendant and to add a person as a party to the Suit either as a Plaintiff or as a Defendant and that the provision does not authorise transposition

of a Plaintiff as a Defendant.

4. As rightly contended by Mr. G. Prabhu Rajadurai, learned Counsel for the First Respondent, which is also supported by Mr. K. Guhan, learned

Counsel for the Second Respondent, the grievance aired by the learned Counsel for the Revision Petitioner is only regarding the form in which the

Order was passed and in substance, such a challenge to the Order shall not be tenable. Of course, it is true that Order 23, Rule 1A, simply

provides for transposition of a Defendant as a Plaintiff when the Plaintiff relinquishes his claim or wants to withdraw the Suit and the said provision

does not contemplate transposition of a Plaintiff as a Defendant, If the contention of the Revision Petitioner that once the Suit is filed by several

persons joining together as Plaintiffs, the abandonment of the claim by one of the Plaintiffs will not give rise to striking off of the name of such

Plaintiff from the array of Plaintiffs and to add such a person as a Defendant using the provision found in Order 1, Rule 10(2), is accepted, then it

will result in grave injustice to the Plaintiffs, who want to pursue the Suit, despite the fact that the other co-Plaintiffs have lost their interest to pursue

the remedy sought for in this Suit. In order to avoid such a contingency, the power conferred on the Court under Order 1, Rule 10(2), cannot be

interpreted to confine to the mere striking off a name from the array of Plaintiff or merely to add a person's name, who was already not a party to

the proceedings. A purposeful interpretation of Order 1, Rule 10(2), will make it clear that the power conferred on the Court cannot only be used

to strike out a person's name from the array of parties as a Plaintiff, but also such power can be used for adding the name of such person struck

out from the array of Plaintiffs as Defendant in order to render complete justice. The same can be done reading the said provision along with

Section 151 of C.P.C. In fact, the I.A. itself had been filed, citing Order 23, Rule 1A, read with Order 1, Rule 10(2) & Section 151 of C.P.C. If

at all the Second Respondent/First Plaintiff is allowed to remain as a Plaintiff after her expression of her intention to abandon/relinquish her claim in

the Suit, it will cause embarrassment and also work out injustice on the First Respondent/Second Plaintiff, who is entitled to pursue the Suit so far

as her share is concerned. Therefore, striking out the name of Pushpam, the Second Respondent/First Plaintiff as Plaintiff has become absolutely

unnecessary. If her name is simply struck off, then the Suit will suffer the defect of non-joinder of necessary party. Only in order to avoid such

defect, the Petitioner has chosen to pray for arraying the said Pushpam as a party Defendant, which can be very well done under Order 1, Rule

10(2) of C.P.C. As pointed out supra, the objection raised by the Revision Petitioner is only regarding the form in which the Order was passed.

This Court goes to the substance of the Order and comes to the conclusion that there is no defect or infirmity in the Order passed by the Trial

Court, which can be taken as an order striking out the name of Pushpam as Plaintiff and adding her name as Second Defendant. For the all the

reasons stated above, the Civil Revision Petition deserves dismissal. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected

Miscellaneous Petition is closed. No costs.