

(2000) 07 MAD CK 0090

In the Madras High Court

Case No : C.M.P. No. 17316 of 1999 in A.S. No. 1137 of 1995

Preethan Lalchand Mahtani and 5 others

APPELLANT

Vs

Sudhir V. Joshi

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

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

Citation : (2000) 07 MAD CK 0090

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : M.S. Subramanian, for the Appellant; K.V. Anantha Krishnan, R. Sivakumar, G. Sukumari and M. Kamalanathan and R. Kamaraj, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—This petition has been filed under Order I Rule 10 (2) of the CPC by the petitioners praying to implead them as respondents in the above Appeal Suit. In the affidavit filed in support of the petition, the petitioners would submit that the appellant/second defendant purchased the suit properties in court auction under the mortgage decree in O.S. No. 104 of 1972 on the file of the court of Subordinate Judge, Chingleput on 30.10.1985 and he took delivery through court on 10.1.1986 in E.P. No. 2 of 1984; that the third defendant to the suit, who is the 5th respondent in the above appeal was claiming title to the suit properties under another sale in court auction held on 6.2.1980 in E.P. No. 92 of 1976 that arose from out of money decree in O.S. No. 5377 of 1970; that the third defendant to the suit alienated the property in favour of the plaintiffs and the defendants 5 to 56 and the plaintiffs filed the suit in O.S. No. 9300 of 1987 for declaration of their title in respect of the portions purchased by them and for Permanent Injunction or in the alternative to set aside the sale deed in favour of the appellant/second defendant.

2. The petitioners would further submit that coming to know that the suit

properties were for sale from the appellant/second defendant, they purchased the suit property under six registered sale deeds at the final stage of hearing of the suit before the lower court and that now they are advised to implead themselves as parties to the appeal proceedings and on such grounds would pray to implead them as respondents to the above Appeal Suit.

3. In the counter filed by the fourth respondent in the above petition who is the third respondent in the above Appeal Suit, besides generally denying the allegations of the petition as false, he would specifically submit that the said suit in O.S. No. 9300 of 1987 had been decreed by the City Civil Court, Madras on 28.10.1991 itself; that during the pendency of the suit, in the year 1990, the petitioners are said to have purchased and acquired interest in the suit properties subject to the result of the litigation; that even after acquiring interest in the suit properties, they did not seek the permission of the court to continue the proceedings in their name and hence now the petitioners are estopped from impleading themselves as parties to the above Appeal Suit particularly under the Order I Rule 10 of Code of Civil Procedure, which is not at all maintainable.

3a. The fourth respondent to the above petition would further contend in the counter that the first petitioner herein, who is admittedly the power of Attorney Agent of the appellant, having come forward to file the above appeal in such capacity, cannot be both the agent of the appellant and the respondent as well in the same proceeding; that absolutely no reasons have been given for impleading them as parties; that they are the subsequent purchasers and not at all in possession of the suit property; that respondents 2 to 4 and 6 to 58 alone are in physical possession of the suit properties; that the petitioners are bound by the result of the suit and that the first respondent to the appeal died even before the institution of the appeal and the very appeal against the dead person is a nullity. For these and other such reasons assigned, the fourth respondent would pray to dismiss the above petition with costs.

4. In the counter affidavit filed by the 10th respondent, besides generally denying the averments of the petition as false and made with ulterior motives, this respondent also would specifically allege that only to the knowledge of the pendency of the suit, the proposed parties have purchased the suit properties, but they have failed to implead themselves as parties to the suit to participate in the suit proceedings; that after the expiry of nearly ten years, the petitioners have now come forward to implead themselves as respondents in the Appeal Suit without any specific reason assigned for having done so. On such and other reasons, this respondent also would pray to dismiss the above petition with costs.

5. During arguments, the learned Senior Counsel appearing for the petitioners would submit that the suit in O.S. No. 9300 of 1987 was filed by R.N. Suryanarayana Iyer and two others, who are arrayed as respondents 2 to 4 in the above petition, for declaration and injunction against Sudheer V. Joshi and others: that the said Sudheer V. Joshi purchased the suit properties in court auction O.S. No. 104 of 1972 in which there was execution proceeding for

delivery, which arose from a mortgage decree; that he was obstructed from taking delivery of the properties by plaintiffs 1 to 3 and defendants 5 to 56 under pretext that they were the purchasers of the same from the third defendant to the suit, who purchased the suit properties in another court auction in O.S. No. 5377 of 1970 that arose from a simple money decrees; that the petitioners being the subsequent purchasers from the appellant, if any order is made in the appeal, the interest of the petitioners will be affected and hence they are interested parties and hence would pray to implead them as party respondents to the appeal.

6. The learned counsel for the petitioners besides contending that whether under Order 1 Rule 10(2) or under Order XXII Rule 10 of the CPC the courts are expected to implead the petitioners as parties to the appeal would also cite two judgments. The first judgment cited by the learned counsel for the petitioners is one delivered in C.K.R.C.N.K.R. Adhappa Chettiar & others v. R.M. Meenakshi Achi and others reported in 96-L.W. 652 wherein it is held that

"In the present case, defendants 1 and 2 have sold their right, title and interest they had over the suit property in entirety, to the first respondent (purchaser) herein. There is a change of status due to the sale of the totality of the interest which defendants 1 and 2 had over the property. Defendants 1 and 2 have no more interest due to sale effected by them to the first respondent herein. Under the circumstances, and in view of the fact that the first respondent becomes the sole and absolute owner of the property which is the subject matter of the suit, she is a necessary and proper party to the appeal.

It is true that the first respondent ought to have mentioned the correct provision of law, i.e. O. 22, R. 10, C.P.C. in her petition to implead. Simply because a wrong provision of law was mentioned by the first respondent in the petition to implead herself as a party to the appeal, it cannot be a ground to reject the application."

The second judgment cited by the learned counsel for the petitioners is one delivered in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, wherein it is held that.

" Though the plaintiff - appellant is dominos litis and is not bound to sue every possible adverse claimant in the same suit and he may choose to implead only those persons as defendants against whom he wishes to proceed, but the court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. In the light of the clear language of the rule, it is not open to the appellant to contend that a person cannot be added as defendant even in a case where his presence is necessary to enable the court to decide the matter effectively."

7. In consideration of the above facts and circumstances as brought forth by parties in their pleadings and having regard to the materials placed on record and upon hearing the learned counsel for both, there is no denying of the fact that there is a change of status due to the sale of the totality of the interest effected by the second defendant/appellant in favour of the petitioners as it has emerged in the first judgment above, cited by the learned senior counsel for the petitioners and there is no doubt in the proposition of law that if the party chooses to implead those persons as parties against whom he wishes to proceed, the court may at any stage of the suit direct addition of parties as it is insisted in the second judgment cited above by the learned counsel for the petitioners. There is also no doubt in the proposition of law that the question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added as it is further insisted in the second judgment cited above by the learned counsel for the petitioners.

8. Since it is Order I Rule 10 (2) of the CPC under which the petitioners have filed the petition, it is relevant, at this juncture, to extract the same.

"(2) Court may strike out or add parties-The 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 question involved in the suit, be added."

9. A reading of the above provision would indicate that the court may at any stage of the proceedings order the name of any party improperly joined to be struck out or order any other necessary party to be added, whether as plaintiff or defendant. From the very language employed in the above provision of law, it is very clear that under this provision of law, an application would lie only before the trial Court when the suit is pending decision and absolutely no indication is there that such an application could be filed before the appellate court as well wherein the appeal is pending.

10. Further, the case in hand is entirely a different one wherein the petitioners have admittedly purchased the suit properties in December, 1990 that too subject to the decision of the suit, knowing full well the pendency of the suit, the nature of the suit that is pending etc. and under such circumstances, ten months after the purchase of the suit properties by the petitioners herein, on 28.10.1991, the suit got decreed in favour of the plaintiffs therein. The appeal has come to be preferred on 30.3.1995, i.e., four years after the suit got decreed and in the said appeal, this petition had come to be filed on 10.9.1999, i.e., exactly nine years after the said purchase of the suit properties by the petitioners to their full knowledge of the pending suit. The vendor of the petitioners herein was the second defendant to the suit and the sole appellant to

the above appeal and he himself having lost the case before the trial Court, has preferred the above appeal through his power of Attorney Agent, the first petitioner herein. The first petitioner, in spite of having preferred the above appeal in his capacity as the power of Attorney Agent of the appellant, would also come forward to join hands with the other petitioners praying to implead them as party respondents to the appeal proceedings.

11. There is also no denying of the fact on the part of the petitioners that it is not their case that either they purchased the suit properties without knowledge of the pending suit or that they did not know that the suit had been decided against their vendor nor do they even come forward to say that they were not aware of the long pendency of the appeal. But, the petitioners, all of a sudden, without adducing any reason whatever for such a long delay caused in coming out with the petition to implead, have come forward to file the above petition stating that they have purchased the properties from the second defendant/appellant and hence they are the necessary parties to the proceedings.

12. At this juncture, it is unnecessary on the part of this court to go into such questions, whether the petitioners have really purchased the properties as they have come forward to plead or whether it is a valid sale or whether such a sale would be hit by lis pendens or even whether the vendor of the petitioners i.e. the second defendant/sole appellant was the auction purchaser of the mortgage decree and whether the vendor of the plaintiffs i.e. the third defendant to the suit was the auction purchaser from out of a money decree etc., as though they did not know all these years of the pending suit and the appeal. So far as this inordinate delay in filing the petition is concerned silence is the only answer from the petitioners. Hence the other reason assigned by the petitioners are not the questions that are to be gone into by this court, at this stage, since the time to go into all these facts has been miserably lost. In fact, the petitioners themselves have not been bothered about all such facts and hence they have come forward to file this application after a lapse of nine years, to their knowledge. Hence, besides the fact that the petitioners cannot file an application under Order I Rule 10(2) of the Code of Civil Procedure, as though it is a suit that is pending before this court, seeking their impleadment as parties, this petition also suffers from serious laches committed on the part of the petitioners since there is long delay caused in filing the above petition i.e. waiting for nine long years, thus allowing the suit itself to be tried and decided and thereafter the aggrieved party preferring the appeal. Therefore, under no circumstances, the petitioners could be added as parties to the above appeal, which has to be decided as it had been originally instituted by the first petitioner herein, standing as the Power of Attorney Agent of the appellant, since the petitioners have purchased the properties, which are the subject matter of a pending suit, thus daring to bear the outcome of the suit on its own. Hence, absolutely no valid or tangible reason exists for this Court to allow the above petition, which becomes only liable to be dismissed being not only lacking on merits and maintainability but also suffering from serious laches committed on the part of the petitioners knowingly and

deliberately.

In result, the above Civil Miscellaneous Petition fails and the same is dismissed.