

(2006) 10 MAD CK 0093

In the Madras High Court

Case No : C.R.P. (PD) No. 10 of 2006 and CMP No. 74 of 2006 and VCMP No. 162 of 2006

R. Dhanasundari @ R. Rajeswari

APPELLANT

Vs

A.N. Umakanth and Others

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

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

Citation : (2006) 5 CTC 440 : (2007) 3 LW 188 : (2006) 4 MLJ 1435

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : Uma Ramanathan, for the Appellant; P. Subba Reddy, for R1 to R4 and M. Devendran, for R5, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The civil revision arises out of an order passed by the District Munsif Court, Chengalpattu, allowing an

application filed by defendants 3 to 6 for transposing them as plaintiffs in the suit, in the wake of an attempt on the part of the plaintiffs to withdraw

their suit.

2. In view of the fact that the scope of the dispute involved in the revision is limited, I have taken up the civil revision petition itself for final disposal,

with the consent of all the parties, though only the petition for stay was posted for hearing today.

3. I heard Mrs. Uma Ramanathan, learned Counsel appearing for the petitioner, Mr. P. Subba Reddy, learned Counsel for the respondents 1 to 4

and Mr. M. Devendran, learned Counsel for the 5th respondent. The other respondents have not chosen to enter appearance, despite service of

notice on them.

4. The facts leading to the present revision, as they emerge from the pleadings of the parties before the trial court are as follows:

(a) One A.C. Nataraja Mudaliar originally instituted a suit in O.S. No. 122 of 1989 on the file of the Principal Sub Court, Chengalpattu against

two persons by name A.V. Manoharan (1st defendant) and Tmt. R. Dhanasundari @ R. Rajeswari (2nd defendant). The prayer in the suit was for

cancellation of the sale deed dated 23-3-1985 executed and registered by the 1st defendant in favour of the 2nd defendant. The contention of the

plaintiff in the suit was that the suit schedule property and other properties were purchased in the names of the plaintiff and the 1st defendant and

also in the name of a firm of which both were partners; that the said firm was dissolved by a deed dated 12-5-1971 under which the assets and

liabilities of the firm were taken over by the plaintiff; that in pursuance of the said deed of dissolution the suit schedule property vested with the

plaintiff; and that while so, the 1st defendant sold the suit property to the 2nd defendant under a sale deed dated 23-3-1985 as though he is the

absolute owner thereof.

(b) After the filing of the suit, the sole plaintiff A.C. Nataraja Mudaliar died leaving behind him surviving 3 sons and 4 daughters as his legal heirs.

All of them were impleaded as plaintiffs 2 to 8 in the suit. In order to facilitate easy contest, all the sons and daughters of the deceased sole plaintiff

gave a Power of Attorney in favour of one of the sons by name A.N. Umakanth and left the matter to him to prosecute the suit.

(c) In the course of the proceedings, making use of the deed of power of Attorney, the Power Agent A.N. Umakanth sold a part of the property

to 3 persons by name Ramasamy, Dhanam Ramasamy and Venkatasubramanian in the year 1995 and also got them impleaded as co-plaintiffs 9

to 11 in the suit in I.A. No. 135 of 2002. The Power Agent A.N. Umakanth himself was the 5th plaintiff in the Suit.

(d) On coming to know of this, the other plaintiffs (legal heirs of the original sole plaintiff) revoked the power of attorney and got the Power agent

A.N Umakanth (5th plaintiff in the suit) and his purchasers (plaintiffs 9 to 11) transposed as defendants 3 to 6 in the suit in I.A. No. 468 of 2003.

(e) Thus the contest in the suit which started of with just 2 parties to the

proceedings, became multilateral and multi pronged. The suit was also transferred to the District Munsif Court, Chengalpattu and renumbered as O.S. No. 219 of 2004.

(f) After the commencement of the trial and the examination of PW-1, DW-1 and DW-2 and in the course of cross examination of DW-3, the plaintiffs filed a memo seeking to withdraw the suit as settled out of court. Though the original defendants 1 and 2 did not resist the said attempt of the plaintiffs to withdraw the suit, the defendants 3 to 6 (who got transposed from the position of plaintiffs 5 and 9 to 11) filed objections to the memo for withdrawal of the suit.

(g) Simultaneously, the defendants 3 to 6 also filed an application in I.A. No. 153 of 2005 under Order 23, Rule 1-A read with Order 1, Rule 10, of the Code of Civil Procedure, for transposing them as plaintiffs 2 to 5 in the suit. By an order dated 7-7-2005 the trial court allowed the application for transposition and it is against the said order that the 2nd defendant in the suit has filed the above civil revision petition.

5. Mrs. Uma Ramanathan, learned Counsel for the petitioner, assailing the order of the trial court, contended-

(a) that the defendants 4 to 6 having purchased the suit property only after the institution of the suit, had no right to get transposed as plaintiffs, as

they had no cause of action as against the defendants 1 and 2 at the time of institution of the suit;

(b) that as subsequent purchasers of the suit property, the defendants 4 to 6 had no right to become plaintiffs and seek cancellation of the sale

deed in favour of the second defendant executed by the first defendant way back in the year 1985 and

(c) that at any rate, the plaintiffs' right to withdraw the suit under Order 23 Rule 1 C.P.C. cannot be curtailed, especially when the plaintiffs did not

seek liberty to file a fresh suit.

6. In support of her contention, the learned Counsel for the petitioner also relied upon the decision of this Court in Hasan Badsha, minor by his

father and next friend Hasan Badsha by his Father and next Friend K. Mahomed Ghouse Saheb Vs. Sultan Raziah Begum by her Father and

Guardian-ab-litem, Fathauddin Saheb, .

7. Per contra, Mr. P. Subba Reddy, learned Counsel appearing for the respondents

1 to 4 contended that withdrawal of a suit cannot be allowed

as a matter of course, especially when certain rights have come to be vested in the parties to the suit. In support of his contention, learned Counsel

for the respondents relied upon the decision of the Supreme Court in *R. Rathinavel Chettiar and Anr. v. V. Sivaraman and Ors.* 1999 AIR SCW

1206.

8. In order to appreciate the rival contentions of the parties, it is necessary to analyse the provisions of Order 23 Rule 1-A CPC, which provides

for transposition of defendants as plaintiffs. Order 23 Rule 1-A C.P.C. reads as follows:

Rule 1-A. Where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule

10 of Order 1, the Court, shall, in considering such application, have due regard to the question whether the applicant has a substantial question to

be decided as against any of the other defendants.

9. The aforesaid Rule was inserted by the C.P.C. (Amendment) Act 104 of 1976 with effect from 1.2.1977. The said Rule was inserted in order

to provide for the circumstances where the defendant may be allowed to transpose as a plaintiff, where the suit is withdrawn or abandoned by the

plaintiff. The statement of objects and reasons for the said amendment makes it clear that the defendant may be allowed to be transposed as a

plaintiff where either the suit is withdrawn or it is abandoned by the plaintiff. In the present case, the suit is sought to be withdrawn by the plaintiff

and hence the contingency for the defendant to seek transposition as a plaintiff has arisen.

10. Once it is seen that the contingency for a defendant to seek transposition as a plaintiff has arisen, then it is to be seen under what

circumstances, such transposition could be ordered. The circumstances under which such transposition could be ordered is clearly spelt out in the

second limb of the Rule, which directs the Court to have due regard to the question "whether the applicant has a substantial question to be decided

as against any of the other defendants".

11. Thus, a plain reading of Order 23 Rule 1-A C.P.C. shows that the defendant is entitled to seek transposition as a plaintiff, if he has a

substantial question to be decided as against the other defendants.

12. In *Nagoor Gani alias Rajamani and Others Vs. Gandhi Meenal and Others*, , a learned Judge of this Court considered the scope of Order 23

Rule 1-A C.P.C. and held in paragraph 12 of his judgment as follows:

This new rule has been enacted in order to enable a defendant, who has identical interest, from being denied his interest if he rested on the success

of the plaintiff's suit and the plaintiff wanted to withdraw the suit. Before a defendant could invoke this provision, it must be shown that the plaintiff

is seeking to withdraw or abandon his claim under Rule 1 of Order 23, C.P.C. It is a condition precedent to enable a defendant to get himself

transposed. The principle that follows this rule is that there must be identity of interest between the plaintiff and such a defendant who wants to

transpose as a plaintiff. It must be a suit where the defendant is entitled to succeed automatically on the success of the plaintiff in the suit. Such a

defendant is usually called as a proforma defendant. To put it in other words, both the parties are projecting the same claim against the other

defendants, and therefore, the success of one is the success of the other. In such cases, the law comes to the rescue of such a defendant so that the

plaintiff, who is having a similar right, cannot defeat the rights of the defendant by colluding with the other contesting defendants.

13. In *Vasanthamma v. V.P. Dhanaraj and Ors.* 1990 1 L.W. 209, a Division Bench of this Court considered the discretionary powers of a

Court to order transposition. In paragraph 3 of its judgment, the Division Bench held as follows:

3. On the question of transposition of parties, the powers of Court, are wide enough to confer a discretion on it to transpose the necessary and

proper party, if that is required for an effective and a comprehensive adjudication of the controversy in the lis. The use of the discretion will depend

upon the facts and circumstances of the case. This discretion is not an unbridled one, but is circumscribed by two broad limitations. One is, where

rights valuable have accrued to the other side. The other is, where there is a lack of bona fides on the part of the party seeking transposition, in that

he has no plausible case to agitate, having a genuine interest in the lis. In these circumstances, the Court will fetter its hands and will not exercise its

discretion. But, the question, as already noted, has to be decided depending on the facts of each case and by bare recapitulation of the principles,

the court should not abdicate its discretionary power for ordering transposition, when, in fact, that application needs to be countenanced in the interests of justice and on the facts of the case.

14. From a perusal of the Rule and the ratio laid down in the aforesaid decisions of this Court, the following tests appear to hold the field, in

deciding the right of a defendant to transpose himself as a plaintiff:

(a) Whether the defendant who seeks transposition has substantial question to be decided?.

(b) Whether such substantial question has to be decided against any of the other defendants?

(c) Whether the defendant seeking transposition has an identity of interest along with the plaintiff as against other defendants?

(d) Whether the success of the plaintiff would result in the automatic success of the defendant who seeks transposition?

(e) Whether the withdrawal or abandonment by the plaintiff, of the suit, results in some vested right of the defendant getting defeated?

The above tests are only illustrative and not exhaustive.

15. Applying the above tests, it is seen in this case that the defendants 3 to 6 who seek to transpose themselves as plaintiffs, were originally

arrayed as plaintiffs 5 and 9 to 11. On the ground that the 5th plaintiff (now the 3rd defendant) acted against the interest of the other plaintiffs (his

own brothers and sisters) in selling the suit property to the defendants 4 to 6, the plaintiffs got them originally transposed as defendants 3 to 6 in

I.A. No. 468 of 2003. In other words, the present defendants 3 to 6 were originally plaintiffs 5 and 9 to 11. Though the defendants 4 to 6 are

subsequent purchasers, pendente lite, they had a substantial issue to be adjudicated as against the defendants 1 and 2, when they were plaintiffs 5

and 9 to 11. By virtue of their transposition as defendants 3 to 6, in the year 2003, they cannot be stated to have lost their rights to have the same

question question adjudicated as against the defendants 1 and 2. As a matter of fact, the 3rd defendant's right to prosecute the suit as a plaintiff,

flowed out of his status as one of the legal heirs of the original sole plaintiff A.C. Nataraj Mudaliar. Therefore, his right to seek the relief prayed for

in the suit filed, by his father did not get annulled by his transposition as the third defendant in the year 2003.

16. If the plaintiffs contest the suit and succeed, such success would have automatically enured to the benefit of the defendants 3 to 6. Therefore, the defendants 3 to 6 can be said to have an identity of interest with the plaintiffs.

17. Under such circumstances, I am of the view that the trial court was right in ordering the transposition of the defendants 3 to 6 as plaintiffs.

Therefore, I find no merits in the Civil Revision and the Civil Revision Petition is dismissed. No costs. The connected CMP & VCMP are closed.