

(2014) 08 MAD CK 0060
In the Madras High Court
Case No : C.R.P(MD) No. 1212 of 2014

R. Robert Bruce

APPELLANT

Vs

Jeyachandra Sekar

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 4(4)

Citation : (2014) 4 LW 310

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Judgement

V.M. Velumani, J.—The Civil Revision Petition is filed against the memo D1 in O.S.No.129 of 2010, dated 08.04.2014 on the file of the Sub Court Padmanabhapuram.

2. The revision petitioner herein is the first defendant in O.S.No.129 of 2010 on the file of the Sub Court, Padmanabhapuram, whereas the respondent herein is the plaintiff.

3. The respondent filed O.S.No.72 of 2007 for declaration that judgment and decree passed in O.S.No.148 of 2005 on the file of Additional District Munsif Court, Padmanabhapuram and the decree and judgment in A.S.No.74 of 2005 of Sub Court, Padmanabhapuram, affecting the right of the plaintiff over the plaint schedule property is null and void and unenforceable and for other reliefs. The suit is filed against the petitioner herein and one R.Raja Jeyasekar.

4. R.Raja Jeyasekar died on 28.11.2013. The petitioner filed a memo that legal heirs of the said R.Raja Jeyasekar are not necessary parties as relief of declaration is sought only against the petitioner. He alone is necessary and proper party.

5. The respondent filed objections stating that at the time of execution of sale deed in favour of the respondent, the second defendant did not have title to the suit property in view of the Will executed by the original owner i.e.,

Ramachandraan and as per the Will, title of the property goes to the legal heirs of the said Ramachandran and hence, the legal heirs of the second defendant are necessary parties.

6. The Subordinate Judge, Padmanabhapuram considered the memo and objection filed by the petitioner and respondent respectively and dismissed the memo and directed the respondent to bring all the legal representatives of the deceased second defendant as parties to the suit for proper adjudication. Against the said order dated 08.04.2014, the present Civil Revision Petition is filed.

7. Heard Mr.V.M.Balamohan Thambi, learned counsel for the petitioner and Mr.H.Thayumanaswamy, learned counsel for the respondent.

8. The learned counsel for the petitioner argued that the petitioner alone is necessary party in O.S.No.129 of 2010 and the second defendant is not a necessary party to the suit and hence, the order directing to implead the legal heirs of the second defendant is illegal and void as second defendant was not the owner as on the date of agreement of sale and subsequent decrees.

9. The learned counsel for the petitioner relied on a judgment reported in (I) P.P.K. Gopalan Nambiar Vs. P.P.K. Balakrishnan Nambiar and others, . In the said judgment, in paragraph No. 2, it has been held as follows:

2. Sri nambiar, learned counsel for respondent, contended that respondent Nos. 2,4 and 11 have since expired and their legal representatives having not been substituted, the appeal stood abated. We find no force. Admittedly, before their deaths, they sold their respective shares by registered sale deeds in favour of other respondents. So, by operation of Order 22 Rule 10 CPC, their respective interest devolved by transfer on the respondents who are already on record. Therefore, there is no need to bring the L.Rs. of the deceased on record or to transpose them as legal representatives.

(ii) Villupuram Municipality Vs. M. Subramanian, Thamayanathi, Meena, Bhanumathi, C. Palanivelu, Thangathai Begum, Alaguvel, S. Radhakrishnan, Geetha, Damayanathi, Meena, K. Subramanian, M. Chidambara Mudaliar, M. Sundar and G. Santha, . In the said judgment, in paragraph Nos. 23 and 24, it is held as under:

23. In all the appeals a memo has been filed by the appellant stating that the first respondent is no more. When there is no need to bring the legal representatives, as the second respondent in all the appeals are the purchasers of the property from the first respondent, virtually the first respondent has no right in the litigation. Hence, the second respondent/purchasers may be treated as a necessary parties and the appeals can be heard.

24. Mr.A.Sivaji raised an objection stating that in case if the purchasers loses in the second appeal it is for them to proceed against the legal representatives of the first respondent, the owner of the land to claim the sale consideration and as such the legal representatives of the first respondent are necessary parties. As

rightly pointed out by the learned counsel for the appellant that the first respondent having parted with his right in the property which is the subject matter of the litigation, there is no need to bring the legal representatives of the first respondent on record. The right of the second respondent/purchasers to proceed against the legal representatives of the first respondent do not arise out of this proceeding; but arise out of the recitals in the sale deed in favour of the second respondent which can always be enforced, depending upon the terms of the sale deed in their favour. Hence, the memo filed by the appellants is recorded. Pending C.M.Ps., are closed.

10. Further the learned counsel for the petitioner also relied on Order 22 Rule 4(4) CPC and contended that when the second defendant has not filed written statement, it is not necessary to implead his legal heirs and judgment may be pronounced against the said defendant notwithstanding the death of such defendant.

11. Per contra, learned counsel for the respondent argued that the legal heirs of the deceased second defendant are necessary parties. There is no irregularity or illegality in the order of the learned Subordinate Judge. It is on fact that the second defendant died on 28.11.2013 and his right to enter into the agreement of sale is disputed. Therefore, the legal heirs of the second defendant are necessary and proper parties to the suit as held by the learned Sub Judge. Hence, there is no illegality in the order of the learned Sub Judge.

12. The learned counsel for the respondent relied on a judgment reported in H. Rahamathulla Vs. R. Murugaiyan and Another, . In the said judgment, it has been held in paragraphs 29 and 30 as hereunder:

29. The next point for consideration is whether the plaintiff is a bona fide purchaser without notice and for valuable consideration. The present Suit is a redemption suit by the plaintiff. The second defendant can resist the suit only if he establishes a better title to the suit property. As an agreement holder the title was not vested with him. In a suit for specific performance by an agreement holder the defence available to the subsequent purchaser is that he is the bona fide purchaser without notice and for valid consideration. But in a suit for redemption by the subsequent purchaser, the title has already vested with him and he need not to prove that he is a bona fide purchaser without notice for valid consideration. What he has purchased is only a right to redemption and if the second defendant files a suit for specific performance the subsequent purchase is oblige to plead and prove that he is a bona fide purchaser without notice and for valid consideration.

30. In my considered view that burden is not on the plaintiff to prove that he is the bona fide purchaser without notice and for valid consideration. On the contrary the burden is upon the second defendant to establish a better title in the suit property to defeat the claim of redemption. On the date of filing of the suit, the agreement holder is not vested with the title of the property. The

subsequent purchaser is always at liberty to redeem the property in a redemption suit. In such a suit the subsequent purchaser need not plead or prove against the mortgage that he is the bona fide purchaser without notice for a valuable consideration. The agreement holder can go for a suit for specific performance and the subsequent purchaser is bound to plead and prove that he is the bona fide purchaser without notice and for valid consideration.

13. I have carefully considered the arguments advanced on either side and perused the materials available on record.

14. As per the ratio in the judgment relied on by the learned counsel for the petitioner, the legal representatives of a dead party need not be impleaded, if the party had sold the estate before their death. Further in the objection to the memo filed by the respondent, they have given the particulars of the legal heirs of the deceased Ramachandran, who is the father of the second defendant and petitioner herein. In paragraph 3 of the plaint, the plaintiff has stated that the wife of the second defendant deserted him and second defendant has no issues. Therefore, when wife of the second defendant is alive, the brothers and sisters of the second defendant are not the legal heirs. Unless the respondent proves that wife of the second defendant is dead, the brother and sisters of the second defendant cannot be impleaded as legal representatives of the deceased second defendant. Further, as per Order 22 Rule 4(4) of CPC, if the defendant had not filed a written statement, his legal heirs need not be impleaded as party and judgment can be pronounced against the said defendant, as though he is alive.

15. The judgment relied on by the learned counsel for the respondent reported in H. Rahamathulla Vs. R. Murugaiyan and Another, is not applicable to the facts of the present case.

16. The learned Judge has failed to consider the stand of the respondent in the plaint that wife of the second defendant is alive and deserted him. The persons mentioned in the objection to the memo can be impleaded as legal representatives of the deceased second defendant only if it is proved that wife of the second defendant is not alive. The learned Judge has failed to consider whether in view of Order 22 Rule 4(4) CPC, there is any necessity to implead the legal representatives of the deceased second defendant. The failure on the part of the learned Judge to consider these aspects amounts to not exercising the power conferred on him properly and that necessitated the interference of this Court.

17. In the result, the Civil Revision Petition is allowed. No costs. Consequently connected Miscellaneous Petition is closed.