
(2009) 04 MAD CK 0113

In the Madras High Court

Case No : C.R.P. (PD) MD. No. 25 of 2009 and M.P. (MD) No's. 2 and 3 of 2009

S. Dhanaraj and Others

APPELLANT

Vs

Dhakshina Mara Nadar Sangam and Others

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2009) 04 MAD CK 0113

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : B.S. Gnanadesikan for B.S.G. Firm, for the Appellant; S. Venkatakrisnan, for R. 1 and S. Meenakshi Sundaram, for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The revision petitioners/petitioners have filed the present civil revision petition as against the order dated 22.12.2008 in

I.A. No. 369 of 2008 in O.S. No. 105 of 2008 passed by the learned Principal Subordinate Judge, Tirunelveli, in dismissing the application filed

by the petitioners under Order I Rule 10(2) and Section 151 of the CPC to implead them as proposed parties/defendants.

2. The trial Court while passing orders in I.A. No. 369 of 2008, has among other things observed that "O.S. No. 105 of 2008 was posted for

defendants" side evidence and filing this impleading application is only to drag on the proceedings and also it is against the direction of the

Honourable High Court order passed in C.R.P. No. 1104 of 2008 dated 30.06.2008, etc. and that the petitioners are neither proper nor

necessary parties to the suit and resultantly, dismissed the application without

costs.

3. Being dissatisfied with the orders passed by the trial Court in I.A. No. 369 of 2008 in O.S. No. 105 of 2008, the revision petitioners have

projected the present civil revision petition before this Court.

4. According to the learned Counsel for the revision petitioners, the trial Court ought not to have proceeded with the trial of the main case before

deciding the impleading application and further that, the trial Court should have taken note of the relief claimed by the plaintiffs in the suit and the

contentions raised by the defendants while deciding the impleading application and moreover, the trial Court has failed to appreciate that all the

principles relating to impleading of parties in the suit are present in the case on hand, because the final result of the suit will affect the impleading

petitioners/revision petitioners and it will be binding on them and further that the allowing of impleading application in I.A. No. 369 of 2008 will not

operate as a bar in regard to the directions issued by the High Court to dispose of the main case and that this aspect of the matter has not been

looked into by the trial Court in a proper perspective and added further, the trial Court is not correct in holding that the petitioners can be the

witnesses and need not be impleaded as parties and that the revision petitioners are very much interested in the welfare of the Sangam and

therefore, they want to implead as parties in the case as defendants and that the impleading application has been filed as early as on 11.11.2008

and in fact, the first petitioner being the Elected Executive Committee Member in the Election held on 16.07.2008 by the defendants 3 to 11 will

be adversely affected and that the judgment to be passed in the suit will certainly bind the petitioners as well and that the trial Court has not

appreciated the order of the High Court passed in C.R.P. No. 1104 of 2008 in a proper perspective and therefore, prays for allowing the Civil

Revision Petition in the interest of justice.

5. The learned Counsel for the revision petitioners submits that P.W.1 was examined on 14.10.2008 and cross-examined on 07.11.2008 and

recalled on 05.01.2009 after expiry of six months" time granted by the Honourable High Court in C.R.P (PD) MD. Nos. 1104, 1144 and 1145 of

2006, to the trial Court to dispose of the main suit in O.S. No. 105 of 2008 within a period of six months from the date of receipt of a copy of this

order and that this Court in C.R.P(PD)MD. No. 25 of 2009 and M.P.(MD)No.1 of 2009 filed against the orders passed by the trial Court in I.A.

No. 369 of 2008, has granted interim stay on 19.01.2009 and in an application to implead a party to the pending proceedings or in a pending suit,

a party/litigant must have a legal right in the issues/controversies involved and further, to avoid conflicting decisions or plurality of proceedings, a

party can be added in a given case.

6. Expatiating his arguments, the learned Counsel for the revision petitioners contends that the general rule that dominus litis is not a universal or

absolute rule and a Court of law should exercise its judicial discretion while dealing with the application for impleading of parties and a Court of

law has to take into account the cumulative facts and circumstances of a given case in an integral fashion and to put at rest all

controversies/disputes involved in the suit, necessary parties can be added and if the proposed parties are bound by the orders/judgments to be

passed, then it is just and fair that they have to be added/arrayed as necessary and proper parties and in the present case on hand, 300 members

out of 50,000 members of the Sangam have called for the meeting and that the defendants say that the general meeting has been taken place on

30.05.2008, but the plaintiffs say that no meeting has been taken place on 30.05.2008 and to place correctly the happenings on 30.05.2008, the

petitioners in I.A. No. 369 of 2008 will have to be added as necessary and proper parties and all members are affected by declaratory suit and

that the revision petitioners do have a legal interest and not a commercial interest and further that they are interested in the welfare of the Sangam

and not to protect or safeguard any individual and that the stand of the revision petitioners is that they have participated in the meeting held on

30.05.2008 and for the purpose of effectively and efficaciously adjudicating the matters involved in the main suit in a complete and comprehensive

manner, the petitioners are necessarily to be impleaded as necessary and proper parties and further, the first revision petitioner, S. Dhaenaraj, has

been declared as an Administrative Member in the meeting held on 30.05.2008 and that no meeting has been held on 29.05.2008 and moreover,

bye-law cannot be amended and in the present stage of the main suit, P.W.1 and P.W.2 have been examined and now, the matter stands posted

for defendants" side evidence which is yet to commence and therefore, the trial Court in its order in I.A. No. 369 of 2008 has come to the

conclusion that when the matter has been posted for defendants" side evidence, I.A. No. 369 of 2008 praying for impleading of parties, has been

filed by the revision petitioners with a view to drag on the proceedings and moreover, it is against the direction of the High Court passed in C.R.P

(PD) MD. Nos. 1104, 1144 and 1145 of 2006 and the petitioners/proposed parties are not interested to drag on the proceedings, but they are

very much anxious to place before the Court as to what transpired in the meeting held on 30.05.2008 so as to enable the Court to arrive at a fair

and just decision while deciding the suit and therefore, as participants in the meeting held on 30.05.2008, the revision petitioners are necessary and

proper parties and that the public interest is involved in the matters in issue in the suit before the trial Court which is admittedly pending final

adjudication and also that without the presence of the revision petitioners/proposed parties, the suit cannot be decided in an effective way and

therefore, prays for setting aside the orders passed by the trial Court in dismissing the I.A. No. 369 of 2008 filed by the revision petitioners herein

to prevent miscarriage of justice.

7. In support of his contention that the revision petitioners are necessary and proper parties for thrashing out the controversies/disputes involved in

the suit, the learned Counsel for the revision petitioners relies on the decision of this Court in D.S. Mariappan and Ors. v. N. Manoharan and Ors.

reported in 2009(1) TLNJ 113 (Civil) at page 115, wherein it is held as follows:

7. After going through the order passed by the trial Court and in view of the various CRP and WP orders that have come into existence between

the parties, this Court is of the considered view that without the presence of the proposed parties, the contentions in the suit cannot be decided

properly and therefore, for an effective determination of the lis between the parties and the proposed parties, the proposed parties are not only

necessary but also proper parties so that the controversies can be thrashed out completely and comprehensively putting a quietus to the issues once

and for all and in that view of the matter, this Court is not inclined to interfere with the order of the trial Court and resultantly, the civil revision

petition fails and the same is hereby dismissed.

8. He also cites the decision of this Court in V. Ravi @ P.V. Ravi v. V. Balakrishnan and Ors. reported in 2009(1) TLNJ 147 (Civil) whereby it is

held that "as the proposed parties are having interest on the suit properties, and in the larger interest of justice, they are necessary and proper parties for proper adjudication."

9. Contending contra, the learned Counsel for the first respondent submits that the revision petitioners/ proposed parties are not proper and

necessary parties to settle the disputes in the suit and that the revision petitioners are not the Executive Committee Members and that the suit has

been filed by the first respondent/plaintiff praying for the relief of declaration that all the resolutions stated to be passed in the General Body

Meeting held on 30.05.2008 and the consequent claim of the defendants 1 to 10 appointing themselves as Temporary Administrative Committee

and Election Officer as null and void and for permanent injunction restraining the defendants 1 to 10, their men, agents, servants etc., from doing

anything to interfere with the affairs of the plaintiff Sangam in any manner including conducting elections claiming strength of the resolutions of the

meeting dated 30.05.2008 and therefore, the trial Court has rightly dismissed the impleading application in I.A. No. 369 of 2008 and

consequently, this Court may not interfere with the same in the revision.

10. The learned Counsel for the second respondent submits that in the suit filed by the first respondent/ plaintiff, there is no allegation against the

second respondent/first defendant in the revision petition and likewise, there are no allegations against the petitioners/proposed parties and that the

plaint in O.S. No. 105 of 2008 has been filed on 16.06.2008 and that I.A. No. 369 of 2008 filed for impleading the petitioners as proposed

parties is born out of collusive fight between the revision petitioners and the first respondent and no documents have been produced to show as to

whether any meeting has been held on 30.05.2008, whether any resolution has been passed and whether it will bind all the Members of the

Sangam and if the Members of the Sangam say that they are to be impleaded in the suit, then every Member of the Sangam will have to be added

as a necessary and proper party and that the new Office Bearers of the Sangam have been prevented from taking charge in view of the order

passed in C.R.P(PD)MD. Nos. 1104, 1144 and 1145 of 2006 dated 30.06.2008

and the present Office Bearers" term expires in October 2009

and in short, there is no cause of action against the petitioners/proposed parties mentioned in the plaint and therefore, the civil revision petition has

to be dismissed by this Court confirming the orders of the trial Court passed in I.A. No. 369 of 2008.

11. The learned Counsel for the second respondent relies on the decision of this Court in S. Krishnan Vs. Rathinavel Naicker and Others, ,

wherein it is observed as follows:

17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending Suit or other proceeding, may be

crystallized into the following categories:

- (a) If without his presence no effective and complete adjudication could be made;
- (b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;
- (c) If there is a cause of action against him;
- (d) If the relief sought in the Suit or other proceedings is likely to be made binding on him;
- (e) If the ultimate outcome of the proceedings is likely affect him adversely;
- (f) If his role is really that of a necessary witness but is sought to be camouflaged as a Necessary party;

If a party to a litigation satisfies the Court that the person sought to be impleaded, passes any one or more of the above tests, then he is entitled to

get the discretion of the Court exercised in his favour. The above tests are not exhaustive and at times, even if a person falls under any one of the

above categories, the Court may refuse to implead him.

12. He also presses into service the decision of this Court in Ashok Kumar v. K.Sabarinathan and Ors. reported in 2008(2) CTC 482, wherein it

is held that "necessary party is one without whom no order can be effectively made and proper party is one who is necessary for final decision of

question involved in proceeding and that addition of parties would depend on facts and circumstances of case and that auction purchaser having

deposited only part of sale consideration cannot claim any interest into suit property as he has no semblance of title and that third party could

become party to such proceeding if he has any semblance of title to said

property."

13. He further places reliance on the decision of the Honourable Supreme Court in T. Vijendradas and Anr. v. M. Subramanian and Ors. reported

in 2008-1-L.W.1 wherein it is held as follows:

It is true the purpose of impleadment of a necessary party is to see as to whether without it no order can be made effectively. If an effective order

can be made, the suit will not be defeated. A decree which is passed in terms of Order XXI, Rule 92(4) does not take into consideration the effect

of a statutory charge on a property, vis-a-vis the statutory right of any persons having interest in the property to redeem or sell the same at any

point of time. When a fraud is practised on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not

required to be complied with.

14. Further, the learned Counsel for the second respondent submits that if the revision petitioners want, then they can be examined as witnesses,

but not to be added as necessary and proper parties.

15. In the vacate stay petition in M.P (MD)No.3 of 2009 filed by the respondents 3 to 6 (in the civil revision petition), it is averred that the

examination of P.W.1 has been over on 25.11.2008 and that the case has been posted periodically almost continuously and on 16.12.2008,

P.W.2 has been examined and again, P.W.1 has been recalled and evidence on the side of the plaintiff has been completed on 05.01.2009 and in

the meanwhile, I.A. No. 369 of 2008 to implead the revision petitioners as proposed parties has been filed on 11.11.2008 and that the revision

petitioners in I.A. No. 369 of 2008 have mentioned that they are stated to be the participants of "30.05.2008 meeting" and that they are necessary

parties to the suit and their inclusion in the suit will throw more light in the matters in issue pertaining to the meeting dated 30.05.2008 etc. and

except the above, no other reason has been mentioned in the affidavit in I.A. No. 369 of 2008 in O.S. No. 105 of 2008 and therefore, it is the

contention of the petitioners in the vacate stay petition in M.P.(MD)No.3 of 2009 (the respondents 3 to 6 in the revision) that the revision

petitioners are not the necessary and proper parties.

16. It is also contended on behalf of the second respondent that the ambit of the suit is whether the resolutions have been passed in the meeting

dated 30.05.2008 and further, whether the meeting has been a validly constituted one and moreover, whether the resolutions are enforceable or to be injuncted.

17. In the counter filed by the first respondent/ plaintiff Sangam in I.A. No. 369 of 2008 in O.S. No. 105 of 2008, it is inter alia specifically

averred that the second respondent/first defendant in the suit has no locus standi at all to conduct or chair any meeting regarding the affairs of the

plaintiff Sangam and when no meeting has been conducted on 30.05.2008, the averment of the revision petitioners that they are the participants of

that meeting and that they are proper and necessary parties to the suit, is totally irrelevant and nothing can be considered in regard to the alleged

meeting dated 30.05.2008 by adding the revision petitioners as parties in their suit.

18. Indeed, the first respondent/plaintiff cannot be directed to implead the revision petitioners as proposed parties/defendants 12 to 17 against

whom no relief admittedly sought for in the suit. Continuing further, it is to be noted that where an effective and complete relief can be obtained by

a litigant, then it is not necessary to join any other party, in the considered opinion of this Court.

19. On a careful consideration of respective contentions and bearing in mind the overall assessment of the facts and circumstances of the case in a

cumulative fashion and in an integral manner, this Court is of the considered view that the revision petitioners are not a proper and necessary

parties to the suit and as a matter of fact, they cannot be added as the proposed defendants 12 to 17 merely because they will be affected by the

judgment/order of the Court incidentally and even in the absence of the revision petitioners, the trial Court can effectively adjudicate upon the

disputes/controversies involved in the suit between the parties and in that view of the matter, the revision petition fails and the same is hereby

dismissed leaving the parties to bear their own costs. Resultantly, the connected Miscellaneous Petitions are closed.