

(2013) 08 MAD CK 0055

In the Madras High Court

Case No : C.R.P. (NPD) No. 457 of 2009 and M.P. No. 1 of 2009

Saraswathi

APPELLANT

Vs

Perumal

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Citation : (2014) 2 MLJ 366

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant; T. Sivagnanasambandam, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrabaabu, J.—The present Civil Revision Petition is filed by the petitioner, who is the second appellant before the lower

Appellate Court. She is aggrieved against an order passed in unnumbered application in rejecting her application filed under Order I, Rule 10 and

Section 151 of the CPC seeking to strike out the respondent in the appeal and to add the President of Ariyakoshti Village Panchayat as

respondent in the appeal. Heard the learned counsel appearing for the petitioner and the respondent.

2. The petitioner and one Veerappan filed a suit in O.S. No. 21 of 2005 on the file of the District Munsif Court, Parangipettai, against the

respondent herein for permanent injunction restraining the defendant, his men, agents and other persons under him in any manner interfering with

the peaceful possession and enjoyment of the suit property. The first plaintiff claimed that he was the absolute owner of the suit property which was

allotted by the Government by granting patta. He had executed a registered Will on 19.2.1999 in favour of the second plaintiff (petitioner herein)

and her son. The defendant is the President of the Village Panchayat and taking advantage of such position, he planned to grab the suit property

from the plaintiffs. Therefore, the plaintiffs filed the said suit as stated supra by arraying the respondent as defendant.

3. A written statement was filed by the respondent herein, wherein it is stated that Rs. No. 248/1 is only a Grama Natham and the first plaintiff got

patta only for RS. No. 382/22 and he had no right, title and interest in respect of RS. No. 382/23, which is Sarkar Poramboke land. It is also

specifically stated at Paragraph No. 14 of the written statement that the plaintiffs are not residing at RS. No. 382/23.

4. The trial Court dismissed the suit by its judgment and decree dated 19.07.2006. Aggrieved against the same, the plaintiffs preferred an appeal in

A.S. No. 86 of 2006 on the file of the Subordinate Court, Chidambaram.

5. During the pendency of the Appeal, an application came to be filed under Order I, Rule 10 and Section 151 of the CPC as stated supra for

impleading the President of Ariyakoshti Village Panchayat in the place of the present respondent who had been arrayed as the defendant.

6. It is contended by the petitioner in the affidavit filed in support of the said application that her father, namely, the first plaintiff, got allotment of the

suit property from the Government and the suit came to be filed when the respondent herein attempted to interfere with the possession of the

plaintiffs in respect of the suit property. It is further stated by her that the respondent herein had only acted as the President of the Village

Panchayat against the plaintiffs and not in his individual capacity. Therefore, the President of the Ariyakoshti Village Panchayat is a necessary and

proper party to the suit which could be seen from the evidence and documents filed by the respondent herein. Therefore, the petitioner herein,

sought to bring the President of Ariyakoshti Village Panchayat on record as respondent in the appeal in the place of the present respondent.

7. The Court below rejected the same by holding that the petitioner had not taken any steps during the pendency of the suit even though the

respondent had stated specifically in his written statement that he was acting as the President of Ariyakoshti Village Panchayat and not in his

individual capacity. Therefore, the Court below rejected the application as not maintainable as it was filed at the appellate stage.

8. The learned counsel appearing for the petitioner relied on the decision of the Apex Court in *Jai Jai Ram Manohar Lal Vs. National Building*

Material Supply Gurgaon, to contend that impleading of the President as party respondent in the appeal would not prejudice the other side since

the respondent herein had admitted that he was acting in his capacity only as the President and not otherwise.

9. Per contra, the learned counsel appearing for the respondent would submit that impleading of the proposed party would alter the nature of the

suit and therefore, the Court below is right in dismissing the said application.

10. Admittedly, the suit was filed for bare injunction by the plaintiffs by specifically contending that the respondent herein, who was the President of

Ariyakoshti Village Panchayat, was misusing his power and position to grab the property from the plaintiffs. A written statement filed in the said suit

also would disclose that the respondent herein had acted in his capacity as the President of Ariyakoshti Village Panchayat and not in his individual

capacity. Therefore, it is clear that the dispute is between the plaintiffs and the Village Panchayat represented by the President. The trial Court

dismissed the suit and aggrieved against the same, the present appeal is filed and pending before the Appellate Court. The right person to contest

the above appeal is the President of Ariyakoshti Village Panchayat and, hence, by bringing the President of Ariyakoshti Village Panchayat as party

respondent in the appeal would not alter the relief or character of the suit. No, doubt, the petitioner had not taken any steps during the pendency of

the suit. At the same time, it is not going to prejudice the respondent in any manner if the Panchayat President is brought on record. Therefore, the

order of the Court below in rejecting the application only on the reason that the petitioner had not taken any steps during the pendency of the suit

cannot be sustained. Accordingly, the order of the Court below is set aside and the matter is remitted back to the Court below to number the said

application filed under Order I, Rule 10 and Section 151 of the CPC and allow the same by impleading the President of Ariyakoshti Village

Panchayat, Chidambaram Taluk, as the second respondent in the appeal and consequently, take up the appeal and dispose of the same on merits

and in accordance with law. Since the President of Ariyakoshti Village Panchayat is to be brought on record as the second respondent, there is no necessity to delete the present respondent from the array of parties. It is made clear that this Court is not expressing any view on the merits and contentions of the rival parties in the suit. Therefore, the lower Appellate Court will proceed to decide the appeal on its own merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. Accordingly, the Civil Revision Petition is allowed. The connected Miscellaneous Petition is closed. No costs.