
(2005) 04 MAD CK 0168
In the Madras High Court
Case No : C.R.P. (PD) No. 923 of 2003

Selvaraj, Wilson and Mercy	Vs	APPELLANT
Sundararajan, Chinnathai and Gurusamy		RESPONDENT

Date of Decision : 15-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2005) 04 MAD CK 0168

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—This Civil Revision Petition is preferred against the Order of Additional District Munsif, Sankarankoil dated 07.02.2003 passed in I.A. No. 740 of 2002 in O.S. No. 595 of 1996, dismissing the Petition filed under Order 23 Rule 1-A C.P.C to transpose the Third Plaintiff as Third Defendant. Plaintiffs 1, 2 and 4 are the Revision Petitioners.

2. The Plaintiffs 1 to 3 and one late Krishnan - Husband of the Fourth Plaintiff - Mercy are Brothers. Their Father - Muniyandi alias Subbiyah and one Shanmugathammal (Paternal Grandmother of the Defendants 1 and 2) have jointly purchased the Suit Properties. The said Shanmugathammal and her Sons Pandi and Srinivasan have sold their share of the Property to the said Muniyandi alias Subbiyah by the Sale Deed dated 10.02.1967 and 11.05.1969. Defendants are the Son and Daughter of one Chinnasamy. The said Chinnasamy is the Son of Shanmugathammal. No share had been allotted to the said Chinnasamy in the Suit Properties. Though no share was allotted to Chinnasamy, considering the relationship of the Parties, Item No. 2 has been given to the said Chinnasamy. Plaintiffs 1 to 3 and the Fourth Plaintiff - Wife of Krishnan are in separate possession and enjoyment of Item No. 1 of the Suit Properties. The Plaintiffs have perfected their Title to the Suit Property by adverse possession also. In

recognition of their possession, separate patta was also issued to the Plaintiffs. But, in the Updating Survey Scheme, the Defendants have misrepresented the fact and have obtained the joint patta as if they are in joint possession and enjoyment of Item No. 1 of the Suit Properties. Hence the Plaintiffs have filed the Suit regarding Suit Item No. 1 for Permanent Injunction.

3. Denying the averments in the Plaint, the Defendants have filed the Written Statement denying the absolute right of the Plaintiffs. According to the Defendants, D-1 and his Mother Madathi Ammal has sold their 7/8th share to the Second Defendant-Chinnathai by the Sale Deed dated 28.05.1996 as the Female Heir of Deceased-Chinnasamy. The Second Defendant-Chinnathai is entitled to 1/8th share. Thus, the Second Defendant has Right and Title to the Suit Properties. Suppressing all these aspects, the Plaintiffs have filed the Suit. On the strength of the Interim Injunction obtained by them, the Plaintiffs have also lodged Police Complaint and are harassing the Defendants and the Plaintiffs are not entitled for the relief sought for.

4. On the basis of the above pleadings, relevant issues were framed. The parties have adduced evidence. The Third Plaintiff was examined as Witness on the side of the Defendants 1 and 2. In his evidence, the Third Plaintiff has denied the Title of the Plaintiffs and has stated that only the Defendants 1 and 2 are in possession and enjoyment of the Suit Properties.

5. I.A. No. 740 of 2002:-

Alleging that the Third Plaintiff has colluded with Defendants 1 and 2, the Plaintiffs 1,2 and 4 have filed this Petition under Order 23 Rule 1-A C.P.C to transpose the Third Plaintiff as Third Defendant. The Revision Petitioners have alleged that the Third Plaintiff has joined hands with the Defendants and hence the Plaintiffs are unable to further conduct the Suit along with the Third Plaintiff.

6. The Defendants 1 and 2 Respondents 1 and 2 have not filed any Counter Statement. But, the Third Plaintiff/Third Respondent has filed the Counter Statement, denying his signature in the Plaint and in the Vakalat filed along with the Plaint. According to him, his signatures in the Plaint and Vakalat are forged and that he has not joined with the Plaintiffs to file the Suit. Further, it is alleged that if the Third Plaintiff is to be transposed as Third Defendant, the nature of the Suit and cause of action would entirely change. Upon consideration of the contentions of both parties, the Trial Court dismissed the Petition. In its view, Order 23 Rule 1-A C.P.C deals with only with the situation where the Defendants can apply for transposing them as the Plaintiffs in case the Suit is either withdrawn or abandoned and that the Plaintiffs cannot seek to transpose the Third Plaintiff as the Defendant. In support of its view, learned District Munsif has relied upon the decision reported in C. Dhandayutham v. M. Natarajan and Ors. 1985 (1) M.L.J. 420.

7. Aggrieved over the dismissal of the Petition, the Revision Petitioners/Plaintiffs 1,2 and 4 have filed this Revision Petition. The Respondents have been served;

but, not entered appearance. Today, the name of the Respondents have been printed in the cause list. Heard the submissions of the learned counsel for the Petitioners.

8. Learned counsel for the Revision Petitioners has submitted that though Order 23 Rule 1-A C.P.C enables the transposition of the Defendant as Plaintiff in the absence of specific provision, the Trial Court ought to have invoked the inherent powers u/s 151 C.P.C. Contending that the power of the Court in ordering transposition of the parties are wide enough, learned counsel for the Revision Petitioners has relied upon the decision of a Division Bench of this Court reported in *Vasanthamma v. V.P. Dhanaraj* 1990 (1) L.W. 209. It is further submitted that invoking the inherent powers, the Trial Court ought to have exercised its discretion in allowing the Application. Even though Order 23 Rule 1-A C.P.C is not applicable and that refusal for transposition of Third Plaintiff as Third Defendant is erroneous.

9. In the light of the submissions by the Revision Petitioners and other materials on record, the point that arises for consideration is whether in the light of the facts and circumstances of the case, the Third Plaintiff figuring as Witness on the Defendants side and deposing in their favour is to be transposed as the Third Defendant and in dismissing the Petition whether there is proper exercise of discretion by the Trial Court.

10. The Third Plaintiff is the Brother of First and Second Plaintiff and one Krishnan - Husband of the Fourth Plaintiff-Mercy. The Third Plaintiff has signed in the Vakalat, Complaint and other relevant affidavits. But, during the trial Stage, the Third Plaintiff, figuring as Witness on the side of the Defendants has denied the signatures in the Vakalat, Complaint and other records. The Third Plaintiff has turned around and deposed against the Plaintiffs stating that the Suit Property has been in possession and enjoyment of the Defendants. Order 23 Rule 1-A C.P.C provides for the circumstances in which the Defendant could be transposed as the Plaintiff - i.e. where the Suit is abandoned or withdrawn, the Defendant could be transposed as the Plaintiff. Order 23 Rule 1-A C.P.C does not provide for transposition of the Plaintiff as the Defendant. But, the power of the Court is wide enough to transpose the proper and necessary parties for complete adjudication. When the Third Plaintiff has joined with the Defendants 1 and 2, it is just and necessary to transpose him as the Defendant. The Application for transposition of the Third Plaintiff need to be countenanced in the interest of facts and circumstances of the case.

11. In the decision reported in *Vasanthamma v. V.P. Dhanaraj* 1990 (1) L.W. 209 the Letters Patent Appeal arose out of the dismissal of the Petition for transposition of the Second Respondent/Second Defendant in the Appeal as the Second Appellant in the appeal. That Application was dismissed by K.M.NATARAJAN, J. As against the Judgment, Letters Patent Appeal has been preferred by the Second Defendant/Second Respondent for transposing as the Appellant. Holding that the power of transposition is wide enough and that the

Court should not abdicate its discretionary power for ordering transposition, the Division Bench has held,

"...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 valuable rights have accrued to the other side. The other is, where there is 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 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, where, in fact, that application needs to be countenanced in the interests of justice and on the facts of the case...."

The principle in the above case where the Second Defendant sought to be transposed as Appellant, applies to the case in hand where the Third Plaintiff is sought to be transposed as the Third Defendant.

12. Though Order 23 Rule 1-A C.P.C does not contemplate such situation, the Trial Court ought to have exercised its power, invoking the power u/s 151 C.P.C. The inherent power u/s 151 C.P.C is complimentary to the powers expressly covered under the Code of Civil Procedure. In many cases where the circumstances so required, the Court has acted invoking the inherent power *ex debito justitiae* and to do real and substantial justice for the administration for which alone, the inherent power exists. The discretion vested in the Court is to be exercised depending upon the various circumstances and facts arising in the cases. It is to be noted that the Third Plaintiff having joined with the Plaintiffs in filing the Suit, his name cannot be simply strike off nor the Plaintiff can continue the Suit when he continues to be on record. The Trial Court ought to have considered the fact and circumstance that the Third Plaintiff having filed the Suit as turned around against the Plaintiff and sailing with the Defendant. Under such circumstances, in the ends of justice, invoking the inherent jurisdiction the Trial Court ought to have allowed the Application.

13. The impugned order, dismissing the Petition for transposition of the Third Plaintiff as the Third Defendant does not in any way change the nature of the Suit. Hence, the impugned order is to be reversed and this Revision Petition is to be allowed.

14. Therefore, the impugned order of the Additional District Munsif, Sankarankoil dated 07.02.2003 in I.A. No. 740 of 2002 in O.S. No. 595 of 1996 is set aside and this Civil Revision Petition is allowed. The Petition filed for transposition of the Third Plaintiff as the Third Defendant is allowed. The Trial Court is directed to

afford sufficient opportunities to the Plaintiffs to take steps for consequential amendment and dispose of the same in accordance with law. There will be no order as to costs.