
(2014) 01 MAD CK 0017

In the Madras High Court

Case No : C.R.P. No.4715 of 2013 and M.P. No. 1 of 2013

S.Renuka

APPELLANT

Vs

K.Gangarathinam

RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Citation : (2014) 1 MadWN(Civil) 374

Hon'ble Judges : Mr. T.Mathivanan, J.

Bench : Single Bench

Advocate : Mr. P.Valliappan, Advocate, for the Petitioner; No appearance, for the Respondent Nos. 1 to 4

Final Decision : Disposed Off

Judgement

Mr. T.Mathivanan, J.—This Memorandum of Civil Revision Petition has been directed against the fair and decretal order, dated 11.11.2013 and made in I.A.No. 647 of 2013 in O.S.No. 74 of 2013 on the file of the learned Additional District Munsif Court, Tiruchengode.

2. When the matter was taken up for hearing Mr. P.Valliappan, learned counsel who is on record for the petitioner was present. Despite the service of notice to the respondents 1 to 4, they never chosen to appear either in person or through their counsel and therefore, they were called absent. Heard Mr. P.Valliappan in the absence of the respondents 1 to 4.

3. Considering the grounds set forth in the Memorandum of Civil Revision and the other materials available on record, this Civil Revision Petition is disposed of on merits as under:-

The Revision Petitioner is the third party to the suit in O.S.No. 74 of 2013. The respondents 1 to 3 are the plaintiffs; whereas the fourth respondent herein is the defendant in the suit.

It appears that the respondents 1 to 3 being the plaintiffs have filed the suit in

O.S.No. 74 of 2013 as against the fourth respondent herein/defendant seeking the relief of declaration to declare the settlement cancellation deed, dated 02.09.2010 executed by the fourth respondent/defendant as unilateral, null and void.

It is manifested from the records that the fourth respondent/defendant has filed his written statement on 22.10.2013. When the suit is pending, the revision petitioner herein, being a third party to the suit, has taken out an application in I.A.No. 647 of 2013 under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure to implead her as second defendant in the suit. The Respondents 1 to 4 herein have resisted the Petition. However, after hearing both sides, the learned Additional District Munsif has proceeded to dismiss the Petition on 11.11.2013 on the ground that the fourth respondent/defendant alone is the proper and necessary party for the effective adjudication of the suit as the relief of declaration has been sought for as against him.

4. Challenging the correctness of the order, dated 11.11.2013, the petitioner/ third party has approached this Court with this Civil Revision.

5. Heard Mr. P.Valliappan, learned counsel for the petitioner. Respondents 1 to 4 were absent.

6. Mr. P.Valliappan, learned counsel for the petitioner has argued that though the petitioner was a third party to the suit, he was the owner of the property and therefore, it was absolutely essential that she should be impleaded as a party to the suit. He has also maintained that the respondents 1 to 3/plaintiffs on the one hand and the fourth respondent/defendant on the other hand had colluded together to defeat the rights on the petitioner and hence it had become necessary for the petitioner to seek his impleadment in the suit, otherwise his right would be affected.

7. He has also adverted to that in order to decide the matter as to whether the cancellation deed, dated 02.09.2010 was valid or not, the petitioner was necessary and proper party and even earlier a settlement deed was executed in her favour. In support of his contention, he has placed reliance upon the decision in S.Krishnan v. Rathinavel Naicker and 22 others reported in 2007 (2) CTC 73. In this case, the learned Single Judge of this Court has enumerated the following categories to determine the rights of a party, who has sought to be impleaded in a pending suit or other proceedings:-

- (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; and
- (f) if his role is really that of a necessary witness but is sought to be camouflaged as a Necessary party;

8. Besides this, the learned Judge has also observed that " 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 fails under any one of the above categories, the Court may refuse to implead him. To quote an example, a subsequent purchaser of a property, which forms the subject matter of the suit, may satisfy the tests (d) and (e) above mentioned and yet the Court may decline to implead him on the basis of the doctrine of lis pendens. Therefore, the above list is only a broad statement of the principles that could be culled out from judicial precedents". In so far as the revision petitioner is concerned, he has squarely come under the amplitude of the categories (a) to (e).

9. Order 1 Rule 10 (2) of the Code of Civil Procedure enacts as under:-

"Sub Rule (2) to Rule 10 of the Code of Civil Procedure - Court may strike out or add parties - Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit."

10. The provisions of Sub Rule (2) to Rule 10 of order 1 of the Code of Civil Procedure envisages - that at any stage of the proceedings, either upon or without even an application of either party if it is deemed to be just, the Court may add the name of any person, who ought to have been joined, whether as plaintiff/defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

11. On coming to the instant case on hand, Mr. P.Valliappan, learned counsel for the petitioner has identified three points for the consideration of this Court:

- (i) The revision petitioner/petitioner is the absolute owner of the suit property;
- (ii) The respondents 1 to 3/plaintiffs and the fourth respondent/defendant had colluded together to defeat the rights of the revision petitioner; and
- (iii) If any decision is taken in the suit, it would ultimately be affected the valuable rights and interest of the revision petitioner over the suit property, and the relief sought in the suit would certainly build upon him.

12. Apart from this, Mr. P.Valliappan has also made stress on his earlier argument

saying that earlier a settlement deed was executed in favour of the revision petitioner and as such for deciding the issue as to whether the cancellation deed, dated 02.09.2010 was valid or not, the presence of the revision petitioner was absolutely necessary.

13. This Court has carefully considered the submissions made by Mr. P.Valliappan and perused the relevant materials available on record including the impugned order.

14. Having regard to the related facts and circumstances, this Court is of the view that the learned Additional District Munsif has miserably failed to consider the very purpose of the petition filed by the revision petitioner/petitioner and equally failed to consider the fact that the presence of the revision petitioner is absolutely necessary to settle the issues which is involved in the suit as according to the revision petitioner she claims to be the absolute owner of the property and that the respondents 1 to 4 being the plaintiffs and the defendants have revolted against her by colluding with each other. Keeping in view of the above fact, this Court finds that this Revision Petition is deserved to be allowed.

15. In the result, the Revision Petition is allowed and the fair and decreetal order, dated 11.11.2013 and made in I.A.No. 647 of 2013 in O.S.No. 74 of 2013 on the file of the learned Additional District Munsif, Tiruchengode, are set aside and the petition in I.A.No. 647 of 2013 is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.