

(1994) 08 MAD CK 0023
In the Madras High Court

Sri Venkateswara Hindu Colony Elementary School	APPELLANT
Vs	
P. Thambiran and Others	RESPONDENT

Date of Decision : 25-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (1995) 2 MLJ 101

Hon'ble Judges : N. Arumugham, J

Bench : Division Bench

Judgement

N. Arumugham, J.—The unsuccessful plaintiff before the trial court is the revision petitioner herein who seeks the intervention of this Court in

setting aside the common order passed by the learned District Munsif, Poonamallee in LA. Nos. 1600, 1881 and 1882 of 1993 in O.S. No.991

of 1993 passed on 1.9.1993.

2. The brief facts of the case which led to this revision are stated as follows:

The educational institution by name Sri Venkates wara Hindu Colony Elementary School by its Administrator K.V. Thambiran, a lessee under the

said colony Building Society has filed a suit before the learned District Munsif, Poonamallee in O.S. No.991 of 1993 against the Commissioner,

Alandur Municipality for the bare relief of permanent injunction restraining him and his servants and staff not to interfere with the peaceful

enjoyment and possession of their building and property, and in which, an interim order of injunction was also sought for in I.A. No. 1600 of 1993

and in which an ad-interim injunction was also granted against the municipality. At this stage, five respondents herein being the residents of the

locality having purchased sites and houses from the said Building Society on

coming to know of the above litigation pending before the trial court approached it by filing an application in LA. No. 1881 of 1993, for impleading themselves as defendants in the suit since they are having a substantial and direct interest in the said litigation which was resisted by the plaintiff and the revision petitioner herein by contending that they are not the necessary parties as they have nothing to do with the suit property or with the cause of action arising therein. After hot contest and hearing the arguments put forward by the Bar for the respective parties and the relevant circumstances and documents, by passing an elaborate common order the learned District Munsif came to the conclusion that the proposed third parties are necessary parties and therefore allowed the application of LA. No. 1881 of 1993 and thereby ordered to implead them as defendants in the suit. Consequently, he has dismissed LA. No. 1600 of 1993 and thereby cancelled the ad-interim injunction granted already in favour of the revision petitioner/plaintiff and allowed the LA. No. 1882 of 1993 as consequential relief. Aggrieved by this common order, the present C.R.P. has been filed on behalf of the plaintiff and a Civil Miscellaneous Appeal also has been filed before the appellate authority against the orders passed in LA. Nos. 1600 and 1882 of 1983, which is pending.

3. I have heard Mr. R. Swaminathan, learned Additional Government Pleader for and on behalf of the revision petitioner/plaintiff who would confine his arguments to the only point but however vehemently attacked the observations made by the learned trial Judge viz., for the absence of rejectable reasons, LA. No.1881 of 1993 was allowed. In short, the learned Additional Government Pleader would submit that though an elaborate order has been passed by the learned District Munsif, however, it has not been confined to the point in issue and in this regard the order became vulnerable and non-speaking one and that therefore this court is well justified in interfering with the same.

4. Per Contra, Mr. V.D. Subramaniarh, learned Counsel appearing for and on behalf of the respondents herein would seriously contend before me that since the suit property clearly specified by the plaintiff/revision petitioner includes a public lane or street which the respondents are entitled to use, under the legal concept of public interest they are deemed to be the interested persons in this litigation and that therefore, though the present

litigation is between the revision petitioner and the Municipality they are the proper and necessary parties to be impleaded in this case for having a total and complete adjudication of the matter on hand.

5. In support of their respective contentions, the Bar has relied on several case laws held by various other High Courts, this Court as well as the Apex Court. Since the issue involved in the instant case falls in a very narrow compass, I do propose to extract the relevant and latest case laws

held by the Apex Court and this Court alone and I do not propose to traverse all the other authorities cited by the bar for the purpose of Judicial

pronouncement.

6. In the context of the above rival contentions and circumstances, the only question which arises for consideration is whether the impugned order

passed by the learned District Munsif on 1.9.1993 in LA. No. 1881 of 1993 lacks every legal propriety and credibility, warranting the interference

of this Court in this revision.

7. The point: Admittedly, it is the common case among the parties herein, that Sri Venkateswara Hindu Colony Elementary School is being run by

the plaintiff as a lessee, under the building society, of the constructed building with compound wall and two gates, for the purpose of providing

education to the children of that locality, which is situate within the jurisdiction of the Alandur Municipality and that the five respondents are the

residents of that locality having their houses, cannot be denied and with regard to the said aspect, there is no dispute or controversy. It appears that

in respect of a land or the space situated in front of the school, there is a dispute between the plaintiff and the defendants and consequently, the Bar

has stated that the Alandur Municipality has issued a notice for the removal of the two gates provided on either side of the eastern side of the

school building. This factum necessitated the plaintiff/revision petitioner to file the suit for injunction against the Alandur Municipality, preventing

their interference and removal of the said gates. Accordingly, interim application was also filed and the order of injunction was granted by the trial

court which is in force. As such, the suit and the application are pending disposal before the court. The petitioners were not added as parties

originally. Under Order 1, Rules 10(2) and 8-A of the Code of Civil Procedure, the 5 respondents herein, being the residents of the locality

claiming to have direct interest in the suit property, have come forward with the application I.A. No. 1881 of 1993 and after hearing the same in

full in the enquiry, the impugned order under this revision has been passed by the court below. Order 1, Rule 10(2) has to be extracted which

reads as hereunder:

The 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, be added.

Rule 8-A reads like this:

While trying a suit, the court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially

in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question

of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the court may specify.

8. A casual reading of the two rules above referred to, would clinch the fact that if the court while trying a suit has found that if any person is

necessary to be allowed to take part in such proceedings or suit for the purpose of deciding the issue which is directly and specifically involved,

then the court can order such person or persons to take part in such proceedings. But this "condition provided in Rule 8-A has been qualified

under Rule 10(2) of the same order of the same code which provide the point that such person becomes necessary only to enable the court to

adjudicate the matter effectively and completely and settle the questions involved in that suit. Therefore, the purpose for which the parties have to

be ordered to be added is only for the purpose of having a total and complete and effective adjudication of the matter involved in a suit and to

settle the questions involved in the same and for the said reasons Order 1, Rule 8-A also was substituted by the legislature. Therefore, one cannot

find any difficulty in importing the said legal ratio to the case on hand that as to

whether the respondents in this revision are the necessary persons

to have a total adjudication of the matter so effectively and so efficaciously and settle the dispute among themselves in this regard.

9. In this regard, it is noticed that the Supreme Court in its decision in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater

Bombay and Others, , while dealing with the scope of Order 1, Rule 10(2) of C.P.C. has observed as follows:

but for the purpose of granting the relief sought for by the appellant by examining the justification of the notice issued by the Municipal Corporation

it is not necessary for the court to consider that answer. Therefore, the presence of the respondent cannot be considered as necessary for the

purpose of enabling the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

The Phraseology and the language of the interpretation given by the Apex Court for Order 1, Rule 10(2) of C.P.C. is extracted as hereunder:

Rule 10(2) gives a wide discretion to the court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the

necessary parties on record. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an

effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The

addition of parties is generally not a question of initial jurisdiction of the court but of a judicial discretion which has to be exercised in view of all the

facts and circumstances of a particular case. The court is empowered to join a person whose presence is necessary for the prescribed purpose and

cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action

against the plaintiff relating to the subject matter of the existing action, the court has power to join the intervener so as to give effect to the primary

object of the order which is to avoid multiplicity of actions. The object of Rule 10(2) of Order 1 is not to prevent multiplicity of actions though it

may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined

must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give

on some of the questions involved: that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. A clear distinction has been drawn between suits relating to property and those in which the subject matter of litigation is a declaration as regards status or legal character. In the former category the rule of present interest as distinguished from the commercial interests is required to be shown before a person may be added as a party. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. The rule does not contemplate joining as a defendant a person whose only object is to prosecute his own cause of action.

10. As above referred to, the Apex Court has clearly laid down principles in regard to how a proper person or a necessary person has to be added as a party to have a final adjudication so effectively, totally and efficaciously to settle the dispute not only on facts, but also on legal concept. If it is identified that he is a proper party or a necessary party, there cannot be any difficulty to order the interveners to be impleaded as parties to the proceedings. If this legal decision is taken as the parameter, then we have to identify the interest of the interveners viz., the five respondents herein, who are said to be the residents of the locality, in and around the suit property. The plank of attack made by the learned Counsel for the respondents herein is that/the space situated in front of the suit property is a lane being used and enjoyed thoroughly by the common public of that locality and since it is denied, their right is directly affected and that therefore, they have got every grievance to place before the trial court and as such, they are added as parties in this case."

11. Though the Alandur Municipality has not come forward with any appeal or revision, however, since they have been added as a party to the

revision, they have filed a counter statement stating that the space situated in front of the school with two gates on either side of the same is the

public lane and conspicuously, the Municipality has no say in this matter with regard to the impleading of the respondents herein in the present suit.

12. The catena of the 10 case laws relied on by the Bar on behalf of the respondents herein are also relevant to be noted for the purpose of

deciding this issue as to whether the 5 respondents herein are proper and necessary parties to be added for the purpose of adjudicating the matter

on hand completely, effectively and so efficaciously and settling the dispute among the parties herein.

13. The ten case laws cited on behalf of the respondents, are as follows:

1. In B.C. Lingam (dead) and Ors. v. Mrs. State Senco Larissa and Ors. 1993 T.L.N.J. 20, a Division Bench of this Court to which (myself was

one of the party) has considered the scope of impleading new parties under Order I, Rule 10, C.P.C. during the hearing of the Letters Patent

Appeal following the pronouncement held by the Supreme Court in Razia Begum v. Sahabzad Anwar Begum AIR 1958 S. C. 896. The Apex

Court has observed as follows:

Learned Judge has precisely for the said reason only chosen to relax the strict rule of a direct and present interest to be determined before the

applicants/respondents are added as party defendants, for, in his opinion, to which we record our respectful agreement by adding the applicants,

the court would be in a better position to effectually and completely adjudicate upon the controversy. No exception can be taken to the court suo

motu ordering for the addition of parties. All that is required in such a situation is to serve the notice, upon the parties and to ensure that the party

concerned has got the opportunity to appear in the proceedings.

(2) In another case A.S. Manavala Chettiar v. T.V. Selvarajan and Ors. (1993)1 L.W. 127, a Division Bench of this Court, while dealing with the

scope of Order 1, Rule 10 of C.P.C. has held as follows:

The impleading of new parties and the consequential amendment of the plaint on such addition and other related steps would all be purely

procedural and initiatory and would not in any manner either decide the right of parties or determine the proceeding finally, insofar as the court is

concerned and, under those circumstances, the court is unable, to accept the

reasoning and vital and valuable rights of the plaintiff are affected and therefore, the order would be a judgment" within the meaning of Clause 15 of the Letters Patent.

(3) In another case, a learned single Judge of this Court in the case held between R. Ramaiya Vs. S. Swaminathan, , had the occasion to consider

the scope of adding the parties under Order 1, Rule 10(2) of C.P.C. by quoting the judgment rendered between Banarsi Dass Durga Prashad Vs.

Panna Lal Ram Richhpal Oswal and Others, by extracting the following passages:

As a rule the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is

the dominus litis. He is the master of the suit. He cannot be compelled to fight against a person against whom he does not wish to fight and against

whom he does not claim any relief. The word "may" in Sub-rule (2) imports a discretion. In exercising that discretion, the courts will invariably take

into account the wishes of the plaintiff before adding a third person as a defendant in his suit. Only in exceptional cases, where the court finds that

the addition of the new defendant is absolutely necessary to enable it to adjudicate effectively and completely the matter in controversy between

the parties, will it add a person as a defendant without the consent of the plaintiff. While holding so, the High Court of Punjab & Haryana referred

the case between Razia Begum v. Anwar Begum AIR 1958 A.P. 195.

(4) In Kisan Uchattar Madhyamik Vidyalaya Samiti, Deoria and Others Vs. IIIrd Addl. District Judge, Deoria and Others, , it was held as follows:

The provisions of Order 1, Rule 10(2) of the Code clearly empower the court to implead any person as party, suo motu, 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. In case the plaintiff is permitted as a rule to choose his own

opponents and the court does not interfere on the point in that event it may be that a collusive decree is obtained against the real owner or

interested person without impleading him as a party and when the decree will become final then at a very late stage the person vitally affected or

the real owner may come to know about it. This would lead to defeat the interest of justice which should not be permitted in a court of law and to

avoid these ugly situations, the Parliament with considerable ingenuity enacted Order, Rule 10(2) of the Code which has been couched in a language having very wide sweep.

(5) In *Bal Niketan Nursery School v. Kesari Prasad* AIR 1987 S.C. 290, the Supreme Court has held as follows:

The scope and effect of Order I, Rule 10 has been considered in number of cases and there is a plethora of decisions laying down the rule that if

the court is satisfied that a bona fide mistake has occurred in the filing of the suit in the name of the wrong person then the court should set right

matters in exercise of its powers under Order 1, Rule 10 and promote the cause of justice.

In *Munshi Ram v. Narsi Ram* AIR 1983 S.C. 272, the Supreme Court has held that,

the omission to implead a defendant was due to a mistake. Section 21(1) of the Act would be attracted and the defendant has to be impleaded

under Order, Rule 10, C.P.C. to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

14. Though several other cases were cited by the Bar on behalf of the respondents, since they relate to the facts to be decided during the trial and

since at present, I am not expected to observe the same for the reason that I am dealing with the correctness of the order passed by the trial court,

I do not propose to traverse the same in this order for the said reasons.

15. Having thus considered the entire gamut of legal decisions enunciated in the above ruling relied on by the Bar on behalf of both the parties, I

have no hesitation to hold that the court has got the power to add any new person or delete any person for the reason of effectively and completely

and more efficaciously adjudicating the matter on hand and settle all the questions of law and to that extent the court is empowered with the

discretionary power under Order 1, Rule 8-A and Order.1, Rule 10 of C.P.C. and insofar as this legal dictum is concerned, the power cannot be

disputed by either of the parties herein.

16. The learned trial Munsif while passing the impugned order has narrated the entire contentions and pleading of the respective parties herein in its

very breadth and length. Admittedly, five respondents herein are the third parties. The plaintiff being the lessee of a building society running a

school above referred with all its building, superstructure, vacant site, compound wall gates and what all. At this stage, I may mention that after

hearing some arguments from the Bar, since this Court felt it necessary, an Advocate Commissioner was appointed and accordingly he visited the

suit property on 9.7.1994 in the presence of the parties and their respective counsel. The Commissioner inspected the property and consequently

filed a plan as well as his report, which were marked as Exs.C-1 and C-2 in this case. The plaintiff's occupation was shown by the Commissioner

in the plan as school building, and the other existing physical features of its lie, the compound wall, gates and the frontage etc. It was the case of the

revision petitioner that the space lying in front of the school which has been shown in red colour by the Commissioner in his plan is the space left

and belong to the school and not a public passage and the plaintiff on either side of the said passage had put permanent gates and since these gates

were asked to be removed by the municipality, apprehending the direct action, the suit was filed for the relief of injunction and in which an ad-

interim injunction was also granted in favour of the plaintiff. In these circumstances, it is noticed that the suit was filed only against the municipality,

and as such the Alandur Municipality has to and is expected to contest the suit for the reason that it is claimed that the passage is a public lane, and

at no point of time the plaintiff averred that the issue involved in this case is deemed to be between the Alandur Municipality and the revision

petitioners herein. However, at this stage, the interveners the respondents herein filed an application on the ground of having direct or indirect

interest in the suit passage for the reason that it was a lane being used by the citizens of that locality and to that extent they are interested in the said

litigation and that therefore the above provision of law was invoked by them by directing the said petition.

17. The ground on which the interveners viz., the respondents 1 to 5 herein are litigating this case is that they are the residents of the locality, having

purchased buildings or lands from the same building society of that locality, entitled to use the said public lane which is by now situate inside the

school which has been occupied by the plaintiff by putting up 2 iron grill gates on either side of the same and that since the suit is pending, they are

the proper and necessary parties to have proper adjudication of the matter and to this affect it was strongly contended by Mr. V.D. Subramaniam

on their behalf.

18. There was no dispute or controversy that the interveners viz., the respondents 1 to 5 herein are the residents of that locality. If that be so, their grievance can be agitated safely provided they were and are entitled to use this public lane or pathway. But in the context of the specific stand taken by the revision petitioner/plaintiff that the passage situated in front of the school and shown in red colour by the Commissioner in his plan is not a public lane or street, the interveners/respondents cannot have a right to get themselves impleaded in this suit for the simple reason that the question whether the land situated in front of the school is a lane available for the use of the public or not is the predominant one to be decided by the court only during the suit and that too no cause of action was alleged against the interveners herein, but however as against the Municipality providing through direct intervention by erecting two gates on either side of the passage. If the interveners viz., respondents 1 to 5 are having any direct or indirect interest in the present suit, definitely they could have been impleaded as parties, to have the matter adjudicated completely effectively and to settle the dispute as above referred. But, since they are residing elsewhere in the said locality, while the question of the public lane, or private lane or space is yet to be decided by the Court of Law, it is for the court to say that they are having any interest or right in the said litigation or in the suit property. The description of the property given in the plaint by its amendment has necessarily to be taken into consideration. The plaint is so conspicuously drafted with the description of the property which includes the passage with 2 iron grill gates. For whatever the reasons, the existence of the same has been noted and identified by the learned Commissioner in his report and plan. When it is argued that the said passage was closed and that the said passage had been used as public or private lane are all questions to be decided only in the suit by recording oral and documentary evidence and after giving every opportunity to both the parties. If really, the respondents are interested and affected to a certain extent in their right to use the public lane, they may very well give evidence during the trial, and get the matter adjudicated. But, in the context of the respective pleadings taken on behalf of the plaintiff and the defendant the Alandur Municipality and the relief claimed therein

and having considered the legal ratio enunciated in the above case laws, I am of the definite and determined view that the respondents 1 to 5

namely, the interveners, are totally unnecessary parties to be impleaded in this suit. But, their rights or otherwise and the remedy is definitely not in this suit.

19. However, for the reasons aforesaid, if the rights of the respondents 1 to 5, viz, the interveners who succeeded before the court below, is really

affected, they can give their names and representations to the Alandur Municipality and on doing so, the court below is directed to examine them

as witnesses in the box during trial and have the matter adjudicated.

20. It is thus having considered every legal aspects and the circumstances, I am fully satisfied to hold that the respondents 1 to 5 who claim to be

the pro bono publico in the suit now pending before the learned District Munsif, Tambaram which is not a litigation under Article 226 of the

Constitution but under the relevant provisions of the Civil Law, will not have such of the rights as parties in a public interest litigation. However, it is

also open for the respondents 1 to 5 to move the Writ Court also to have their rights adjudicated if they are really interested over the suit property.

If not, they can give evidence on behalf of the Alandur Municipality if the suit property at any point of time was used by the public and treated as a

public lane or street.

21. In other respects, having considered every aspect of the present case and the circumstances, I feel that the impugned order passed by the

learned District Munsif is not on the factual point involved in this case, but in this respect, with great constraint I have no hesitation to hold that the

order of the learned District Munsif is a non-speaking one and in its wider sense, the question involved is whether the interveners are not only

proper and necessary parties but also whether their presence is necessary for adjudication of the matter fully, totally and so efficaciously to settle

the issue involved among the parties herein and that is the object of Order 1, Rule 10(2) and Order 1, Rule 8-A of C.P.C. which the court is very

often reminded of, but unfortunately has been overlooked by the court below in this matter. Therefore, under the circumstances, \ feel this is a fit

case in which this court is fully justified in interfering with the impugned order passed by the court below.

22. In the result, with the above directions and the opportunity given to the interveners viz., the respondents 1 to 5, the revision petition is allowed

and the order passed by the learned District Munsif is hereby set aside. The lower court is also hereby directed to expedite the trial and dispose of

the same in accordance with law at the earliest. There will be no order as to costs for any parties in the circumstances. Consequently, C.M.P.

No.6375 of 1994 is closed as unnecessary and C.M.P. No. 11264 of 1994 is allowed.