
(2015) 04 MAD CK 0138

In the Madras High Court

Case No : O.S.A. Nos. 243 of 2007, 74 of 2013 and M.P. No. 1 of 2011

T. Mohanraj

APPELLANT

Vs

Akila Thiruvudancore Siddha Vaidhya Sangam and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 2 Rule 2, Order 23 Rule 1A, Order 23 Rule 3A

Citation : (2015) 2 CTC 673

Hon'ble Judges : Sanjay Kishan Kaul, C.J;R. Mahadevan, J

Bench : Division Bench

Advocate : V. Selvaraj, for the Appellant

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—The appeal in O.S.A No. 243/2007 has been filed by the Defendant challenging the order dated 16.03.2006 in O.A 843 of 2005 appointing Mr. N.Harichandran, District Judge (Retired) as interim administrator of the plaintiff.

2. The Appeal in O.S.A No. 74 of 2013 has been filed against the order dated 29.6.2012 in Appn No. 4907/2011 impleading the Mr.D.Abraham as 4th Defendant in the suit. The said D.Abraham has filed M.P No. 1/2011 in O.S.A 243 of 2007 to implead himself as a respondent in the appeal.

3. The brief facts of the case are as follows:

a. The plaintiff is a company registered under the Companies Act and the object of the plaintiff is to promote siddha medicine and to attain that object, the plaintiff has been running a hospital and college. The plaintiff is governed by the bye-laws which provides for various regulations regarding the appointment and election of various office bearers including to the office of the president. The further case of the plaintiff is that several irregularities were committed by the defendant and some other members. When the defendant was appointed as

Receiver in the suit in C.S No. 1380/92, he committed several malpractices. The suit was transferred to the file of the IV Assistant City Civil Court. Subsequently the defendant has committed several irregularities by issuing bogus certificates, unauthorisedly collected tuition fees and has purchased several properties in his name from and out of the funds of the plaintiff. The defendant pursuant to a general body meeting resigned on 31.08.2002 and the new office bearers were elected and D.Abhram was authorised to act as Administrative Secretary and also to substitute himself in the pending suit on the file of the IV Assistant City Civil Court. The defendant was relieved from the post of receiver by this court on 14.08.2003 by virtue of orders in CRP (PD) 914 of 2003. Several suits there after came to be filed by the defendant and other students before different courts to immobilise the elected members of the plaintiff. Even after being ousted from the seat of president, the defendant has been collecting funds. Inter alia, stating many other things, the suit has been filed by the plaintiff for permanent injunction to restrain the defendant from interfering with the plaintiff's Administration including collection of fees from the student of the college and also to direct the defendant to render accounts in respect of the amounts collected from the students from 15-08-2003.

4. The written statement has been filed disputing the averments in the plaint and contended that the alleged minutes of the general body meeting on 31.08.2002 are a forged one and a similar plea of forgery raised in I.A 383 of 2003 in O.S No. 272 of 2003 was accepted by the District Munsiff, Kuzhiturai. Relying upon various other pleadings contended that since he continues to be the president of the sangham, the defendant has sought for the dismissal of the suit. Pending disposal of the suit, an original application in O.A 843 of 2005 was filed for injunction. After considering the rival contentions, this court by an order dated 16.03.2006 appointed Mr.N.Harichandran, a retired District Judge as the Interim Administrator. Aggrieved by the same the present appeal in O.S.A No. 243/07 has been filed. In the meanwhile Mr. Justice A.Ramamurthy had been appointed as the Interim Administrator by the order of this Court on 20.06.2006 in the place of Mr.N.Harichandran.

5. During the pendency of the suit 752/05, D.Abraham, claiming to be the Administrative secretary of the plaintiff and citing that he is a party to various other proceedings filed the application in A. No. 4907/2011 to implead himself as a defendant in the suit alleging collusion between L.Noel Raj, the president of the plaintiff and the defendant, on 11.10.2011. On 14.10.2011, a memorandum of compromise was filed by the plaintiff and the defendants whereby the plaintiff has sought for the withdrawal of the suit and to discharge the duties as interim administrator. The case of the plaintiff and the defendant is that the court passed oral orders immediately and the suit was dismissed as withdrawn. However, the court took a different view and went on to hear the application for impleading and erroneously allowed the same. Hence, the appeal in O.S.A. No. 74 of 2013 has been filed.

6. The learned counsel appearing for the appellant painstakingly took us through various documents and pleadings by the said Abraham to show that inconsistent pleas are being taken before different forums and to contend that Mr.D.Abraham and Noelraj have been removed from sangam and Form 32 to that effect has also been filed. The counsel further contended that after withdrawing O.S No. 272 of 2003 on the file of the District Munsif Court. Kuzhithurai, D.Abraham cannot seek impleadment in the present suit. The counsel has also relied upon the judgment of the Apex Court in State Bank of India Vs. Gracure Pharmaceuticals Ltd., AIR 2014 SC 731 : (2014) 118 CLT 59 : (2013) 6 CTC 789 : (2013) 15 JT 316 : (2014) 1 RCR(Civil) 889 : (2013) 14 SCALE 392 : (2014) 3 SCC 595 : (2014) 1 SCJ 158 in support of his contention. The counsel further drew the attention of this Court to the extract downloaded from the court website regarding the status of the suit as on 14.10.2011 and contended that in view of the fact that the suit itself was disposed on 14.10.2011, the learned Single Judge has erred in hearing and allowing the application and therefore, he has urged this Court to set aside the order, dated 29.06.2012.

7. The Learned Counsel for the first respondent in O.S.A 74/13 and the proposed party in M.P No. 1/2011 in O.S.A 243/2007 has submitted that the order of the Learned Single Judge is a well reasoned one and therefore, the interference of this Court is unwarranted.

8. The order was passed considering the fact that the first respondent has been a party in many of the suits pending between the sangam and the appellant/defendant and therefore he is a necessary party to the suit. The learned counsel also pointed out that the Learned Single Judge before whom the matter was listed on 14.10.2011 has specifically given a finding that no orders were passed by him accepting the memo to close the suit and therefore, an information published in the website cannot be relied upon and to nullify the specific finding of the court and therefore sought for the dismissal of the appeal.

9. The learned counsels for the second and third respondents have sailed with the counsel for the appellant and contended that the suit itself was disposed of on 14.10.2011 and hence the reopening of the suit and the impleading of the first respondent is bad in law.

10. Heard all the learned counsels appearing for the respective parties.

11. In so far as O.S.A No. 243/2007 is concerned, it is not in dispute that the relief sought for has become infructuous as subsequently, Mr. Justice A.Ramamurthy, the retired judge of this Court was appointed on 20.06.2006 after Mr.N.Harichandran, had declined to function as interim administrator.

12. No appeal has been filed challenging the appointment of Mr. Justice A.Ramamurthy. Subsequently, many directions have been issued to the new Interim Administrator and the same have also not been challenged. In the order dated 17.11.2006 in O.A 887/2006, the Learned Single Judge has issued certain directions, which are as under:-

"8...Subsequently also, certain directions were issued by this Court in O.A No. 887/2006, A.No. 4383/2006,etc on 17.04.2007. The said orders have not been challenged. The conduct of the appellant only shows that he has accepted the appointment of the new interim Administrator."

13. In view of the above, the appeal in O.S.A. No. 243 of 2007 is dismissed as infructuous.

13a. Now let us examine as to whether the suit was disposed of and whether D.Abraham is entitled to be impleaded as a defendant in the suit.

14. This court has perused the order dated 29.06.2012, where in the learned Single Judge has not only discussed about the issue of recording the memorandum of compromise but also discussed the necessity of the first respondent in detail while disposing of the suit. In so far as the plea of disposal of the suit is concerned, the learned Single Judge has held as follows:-

"20. Even though the memo of compromise filed by both parties was filed before the Court, no order was passed therein by the Court and the said memo remains as such. No oral order was passed by this Court as to the disposal of the case on this memo. The leaned counsel for the plaintiff relies upon a decision of the Supreme Court in Vinod Kumar Singh Vs. Banaras Hindu University and Others, AIR 1988 SC 371 : (1987) 4 JT 304 : (1987) 2 SCALE 1046 : (1988) 1 SCC 80 : (1988) 1 SCR 941 : (1988) 1 UJ 57 wherein it is held as follows:- "Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the court in regard to the conclusion. Once that stage is reached and the court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced, parties present in the court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case. in the instant matter, we find that there is no material at all to show as to what let the Division Bench which had pronounced the judgment in open court not to authenticate the same by signing it. In such a situation the judgment delivered has to be taken as final and the writ petition should not have been placed for fresh hearing. The subsequent order dismissing the writ petition was not available to be made once it is held that the writ petition stood disposed of by the judgment of the Division Bench on 28.7.1986." Firstly this Court did not pass any sort of order on the memo and presently the parties to the compromise do not seek for any alterations or additions in the compromise. In this context, there could be no discussion under Order 23 Rule 1A and the above said decision of the Apex Court would not come to the rescue of the plaintiff.

23. As far as the present case is concerned, no order has been passed on the memo of withdrawal. Hence the applicant need not seek recourse to Order 23 Rule 3A of C.P.C. The same principles have been laid down by the Honourable Supreme Court in *Banwari Lal Vs. Smt. Chando Devi* (through L.R.) and another, AIR 1993 SC 1139 : AIR 1992 SC 1139 : (1992) 1 JT 420 Supp : (1992) 3 SCALE 448 : (1993) 1 SCC 581 : (1992) 3 SCR 524 Supp also.

24. Viewing from any angle, this Court does not find any embargo to entertain the plea of the applicant for his impleadment as a party defendant to the suit. There is no order of disposal of the suit in any way and the memo of compromise has not been acted upon by this Court. In the interest of justice, for the betterment of plaintiff, the public institution, this Court is of the confirmed view that the presence of the applicant is essential for further proceedings of the case. This point is answered in affirmative."

15. After perusing the records, the Learned Judge, who himself heard the matter on 14.10.2011, has given a specific finding that the memorandum of compromise has not been acted upon by this court. Hence, this court is of the view that the extract of the website cannot be relied upon to overcome the specific orders of the Learned Single Judge. It is also not in dispute that no order was signed and pronounced by the Learned Single Judge. Hence, the contention of the appellant that the suit itself was disposed of on 14.10.2011 is rejected.

16. In so far as the judgment reported in *State Bank of India Vs. Gracure Pharmaceuticals Ltd.*, AIR 2014 SC 731 : (2014) 118 CLT 59 : (2013) 6 CTC 789 : (2013) 15 JT 316 : (2014) 1 RCR(Civil) 889 : (2013) 14 SCALE 392 : (2014) 3 SCC 595 : (2014) 1 SCJ 158 , referred to supra, relied upon by the learned counsel for the appellant is concerned, the above judgement is not applicable to the facts of the case. In the above judgment, the Hon'ble Court has discussed the scope and applicability of Order 2 Rule 2 of CPC. Further, as per the dictum of the Apex Court also and as evident from Order 2 Rule 2 itself, the claim based on a cause of action must be whole and the plaintiff cannot omit any claim without the leave of the court.

17. In the present case, though the cause of action in the present suit comprises the causes of action of the earlier suit, the pleadings on the face of it discloses other causes of actions and subsequent events. Hence the above judgment is not applicable to the present facts of the case.

18. In so far as the impleading of the first respondent as a party to the suit, the Learned Single Judge after going through the various pleadings in various suits has come to a conclusion that the first respondent is a necessary party to the suit and to protect the interest of the public institution, the presence of the first respondent as essential and hence allowed the appeal. In the judgment reported in *Baluram Vs. P. Chellathangam*, (2015) 1 RCR(Civil) 333 , the Apex Court has held as follows:-

"13. The general rule in regard to impleadment of parties is that the plaintiff in a

suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10. (2) Court may strike out or add parties.-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 [pic]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."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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19. Referring to suits for specific performance, this Court in *Kasturi Vs. Iyyamperumal and Others*, AIR 2005 SC 2813 : (2005) 2 CTC 676 : (2005) 4 JT 565 : (2005) 141 PLR 326 : (2005) 6 SCC 733 : (2005) 3 SCR 864 , held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a

transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice."

15. In the present case, the appellant could not be held to be a stranger being beneficiary of the Trust property. The trial Court was justified in impleading him as a party. The High Court erred in interfering with the order of the trial Court.

19. The ratio laid down in the above judgment is squarely applicable to the present facts of the case. Upon perusal of the records, this court is also of the same view that the first respondent is a necessary party to the suit as he has been appointed as an administrative secretary. The first respondent has been a party in all the suits and has successfully impleaded himself in other suits also. The validity of the minutes of meeting dated 31.08.2002 and the alleged removal of the first respondent can be decided only after full-fledged trial. Therefore, this court does not find any error in the order of the Learned Single Judge impleading the first respondent as a defendant.

20. In view of the fact that this court is upholding the impleadment of the first respondent in the suit, we are of the opinion that the above appeals in O.S.A No. 243 of 2007 and O.S.A. No. 74 of 2013 are liable to be dismissed. Accordingly, they are dismissed. Since the very appeal in O.S.A. No. 243 of 2007 is dismissed, no orders are necessary in M.P No. 1/2011 in O.S.A No. 243/2007. However, there will be no order as to costs. Connected M.P. is also dismissed.