
(1939) 05 MAD CK 0001
In the Madras High Court

Vanjiappa Goundan

APPELLANT

Vs

N.P.V.L.R. Annamalai Chettiar and Others

RESPONDENT

Date of Decision : 02-05-1939

Acts Referred:

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

Citation : AIR 1940 Mad 69 : (1939) 50 LW 494 : (1939) 2 MLJ 551

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This Revision Petition is filed against the order of the Court below refusing to strike out the petitioner's name from the

plaint. The petitioner who is the second plaintiff in the suit sold to the first plaintiff the first respondent herein a certain village called Pudukottah

which, along with certain other villages belonging to the defendants in the suit some of whom are the other respondents here, was charged with the

payment of a certain annuity. In execution of a decree obtained for the recovery of such annuity, the petitioner's village was sold but the sale was

set aside under Order 21, Rule 89 on the petitioner depositing Rs. 7,976-9-6 in Court. The petitioner alone having thus paid the entire amount

which was payable from out of all the villages charged with such payment, he claimed to be entitled to recover Rs. 2,514 by way of contribution

from the owners of the other villages. Subsequently, the petitioner sold the village of Pudukottah to the first respondent with all rights appurtenant

thereto. The sale-deed purports to convey also the petitioner's right to recover this sum of Rs. 2,514 and the present suit was accordingly brought

by the first respondent impleading the petitioner as second plaintiff for recovering this sum from the defendants who are the owners of the other

villages charged with the payment of the annuity.

2. In the application filed by the petitioner in the Court below, however, he alleged, that, the sale by him to the first respondent was never intended

to convey his right to recover the amount in question, that the clause purporting to convey this sum also was included in the sale-deed by the first

respondent fraudulently, advantage being taken of his ignorance and illiteracy and that he was impleaded as the second plaintiff in the suit without

his knowledge. The lower Court, however, found that the petitioner did sign the plaint and also the vakalath executed to the first respondent's

pleader in the Court below and the petitioner's learned Advocate has not attacked that finding before me.

3. He contends that inasmuch as there is no prayer in the plaint for any relief being awarded to the petitioner, either primarily or in the alternative,

he could not be regarded as a plaintiff at all in the proper sense of the term, and his joinder as second plaintiff was improper, and the Court below

should therefore have struck out his name under Order 1, Rule 10(2), Civil Procedure Code. The first respondent objects on the ground that the

petitioner's application was vexatious and inspired by the first defendant (second respondent herein) who wants to defeat his right to recover the

amount in question under the sale from the petitioner, and that the striking out of the latter's name from the suit would be highly prejudicial to him.

The second respondent has no objection to the petitioner's name being struck off as second plaintiff, provided he is added as a defendant but

insists that the petitioner should remain on the record, as his presence is necessary for a complete and effectual adjudication of all the matters in

controversy between the parties.

4. The Court below held that the joinder of the petitioner as second plaintiff was not shown to be improper and that he had no absolute right of

withdrawing from the suit under Order 23, Rule 1, Civil Procedure Code, without the consent of the first respondent and therefore dismissed the

application. The petitioner's learned Advocate conceded that the view of the lower Court is right so far as Order 23, Rule 1 is concerned, in view

of the decision of this Court reported in A.M. Ramasami Chettiar Vs. Rengan Chettiar and Others, , but he urged that the petitioner's joinder as a

plaintiff was improper and that, in any case, as he now claims the amount in

dispute adversely to the first respondent, he cannot continue to be a co-plaintiff with the latter but should be transposed as a defendant, if he could not be removed from the suit altogether. I see considerable force in this contention. The joinder of the petitioner as second plaintiff is not authorised by the terms of Order 1, Rule 1, Civil Procedure Code, as no right to relief is alleged to exist in the petitioner jointly, severally or in the alternative, and when the petitioner begins to set up a claim to the amount in suit adversely to the first respondent, it will be highly expedient, if not necessary, to strike out his name as second plaintiff as desired by him. But as he is clearly a person whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, the proper order, in my opinion, would be to direct the petitioner to be transposed as a defendant in the suit, see *Mathews, In re: Oates v. Mooney* (1905) 2 Ch. 460, where it was observed,

The general rule is that where co-plaintiffs disagree, the name of one is struck out as plaintiff and added as defendant.

5. The Court below has taken the view, relying upon *Banbihari Mukherji v. Bhejnath Singh Mahapatra* ILR (1931) 59 Cal. 329, that the

"questions involved in the suit" referred to in Order 1, Rule 10(2) must mean the questions which are involved in the suit as originally framed

between the parties to the suit. But this High Court has placed a wider interpretation on those words and has held that the object of the provision is

that where several disputes arise out of one subject-matter, all the parties interested in such disputes should be brought before the Court and all

questions in controversy between them should be completely settled in the action-- see *Secretary of State for India v. Murugesu Mudaliar* (1928)

29 L.W. 753.

6. Further, the Court below has not considered the question from the point of view of the rights of the parties. Assuming that the petitioner's

allegation that the right to recover the amount in question was never intended to be conveyed by him to the first respondent is true - as to which I

express no opinion - the effect the order of the lower Court would clearly be to nullify that right by precluding him from suing the defendants again

for the recovery of the amount, while in this suit he cannot obviously get that

relief. The first respondent's learned Advocate suggested that the petitioner might, if his allegation is true, sue the first respondent later on for the recovery of any sum that might be decreed to the latter in this suit.

But apart from possible technical objections to which such a suit might be open by reason of the petitioner having signed the plaint in this suit, it

would be a suit to enforce a cause of action which the Court would have helped to bring into existence by enabling the first respondent to commit,

under its own aegis, what undoubtedly would be a wrongful act on the hypothesis assumed.

7. Having regard to all these considerations, I set aside the order of the Court below and direct the name of the petitioner to be struck out as

plaintiff and added as a defendant in the suit. Each party will bear his own costs here and below.