

(1928) 04 MAD CK 0058
In the Madras High Court

Venkatasubbammal

APPELLANT

Vs

Kandasamy Raja

RESPONDENT

Date of Decision : 27-04-1928

Acts Referred:

Citation : AIR 1928 Mad 978 : 113 Ind. Cas. 310

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This is an application to set aside the order of the District Munsif of Palamcottah in O.S. No. 62 of 1927 making the respondent a party to the suit. The plaintiff in the suit is the petitioner. She sued defendants 1 to 4, 5 and 6 on a mortgage bond executed by defendants 1 to 4. Defendants 5 and 6 had purchased some items of the property and had agreed to pay up a portion of the mortgage amount. The respondent intervened by filing a petition in which he stated that he was the adopted son of the plaintiff's husband and that the mortgage deed sued on really belonged to him and that the plaintiff was only a name-lender. On these facts he requested that he should be made a party to the suit. The learned District Munsif, stating that the truth of the allegations could be gone into at the trial of the suit, made him a party and in framing the issues raised the question of the respondent's adoption as a point for decision.

2. It is argued that in the circumstances of this case the learned District Munsif should not have made the respondent a party to the suit. The provision of law that gives the Court power to add any one as a party to a suit, is contained in Order 1, Rule 10 (2), Civil P.C. The Court has a very large discretion as regards the matter and may at any stage of the proceedings with or without the request of the parties, make any person a party to the suit. But the discretion should be exercised, as the rule itself says, only if "it is necessary to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question for decision therefore in this case is: Is it necessary to adjudicate upon and settle the question raised in the suit that defendant 7 should be made a

party. I have no doubt that it is not necessary to make him a party to settle the questions involved in the suit. The written statement of defendants 1 to 4 does not raise the title of defendant 7 to receive the mortgage amount. It simply says that they have delayed in making the payment because they have heard that there is a litigation between defendant 7 and the present plaintiff. As a matter of fact there was no litigation pending between them at that time. They then say that they are prepared to pay the amount and they should not be asked to pay the costs. So far as they are concerned it is clear that the question of the adoption of defendant 7 does not come in as a necessary issue for the adjudication of the case.

3. Defendants 5 and 6 filed a written statement but that was not before the present respondent was made a party but only after he was made one. In that written statement they do say something about the claims set up by the respondent as the adopted son, but do not state that the question of adoption should be settled in the suit before the money is paid. The claims of defendant 7, whatever those may be, are only referred to, to justify the delay in making the payment, for they say after referring to the impleading of defendant 7 that they have deposited the money in Court to save trouble. So the written statement and the plaint filed by the plaintiff do not raise the question of adoption and therefore it is not necessary to adjudicate upon and settle that question for the decision of this case. Having regard to the cause of action alleged and the relief claimed it is not necessary that defendant 7 should be made a party. Authority for this position, if authority were necessary apart from the section itself, may be found in recent decisions of this Court in *Chidambaram, Chettiar v. Subramaniam Chettiar* AIR 1927 Mad. 834, and *Official Receiver of South Kanara Vs. Bastiao Souza and Others*, . In these circumstances I allow the petition and set aside the order of the lower Court making the respondent a party to the suit. The petitioner will get his costs in this Court.