

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2015
Delivered on : 25.11.2015

CORAM

THE HONOURABLE MR. JUSTICE **K.K.SASIDHARAN**

C.R.P.(NPD)No.395 of 2015 and
M.P.Nos.1 and 2 of 2015

1.Ramesh
2.Sivagami

... Petitioners

vs.

1.Chandran (died)

2.Estate of Late Mrs.Padmini Chandrasekaran
Represented by its Executor
Dr.H.B.N.Shetty

3.N.Selvaradjalou Chetty Trust
By its Chairman Dr.H.B.N.Shetty

4.Ambujam

5.S.Selvaraj

6.S.Selvam

...Respondents

(Respondents 5 and 6 impleaded as per
order in M.P.No.2/2015 dated 30.10.2015)

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 13.08.2014 passed in I.A.No.903 of 2014 in A.S.No.32 of 2013 by the Hon'ble Principal District Judge, Pondicherry and praying to set aside the same.

For Petitioners : Mr.P.Sivamani

For Respondents : Ms.P.Srividhya for R2 and R3
No appearance for R4
Mr.K.V.Subramaniam, Senior Counsel
for Mr.A.S.Narasimhan for R5 and R6

ORDER**Introductory**

The first respondent through an application in an Appeal Suit filed by a Trust wanted to decide a fresh dispute inter se between him and the petitioners. The learned District Judge without ascertaining the nature of proceedings and the *lis* involved in the appellate proceedings allowed the application and thereby expanded the scope of first appeal.

Brief Facts

2. The mother of the petitioners filed a suit in O.S.No.18 of 1993 before the Sub-Court, Puducherry, claiming that she is the sole legal heir of deceased Padmini Chandrasekaran. The suit filed against the Union of India, represented by Chief Secretary to Government, the Tahsildar Puducherry and the fourth respondent was decreed by the Trial Court by judgment and decree dated 28.10.1993.

3. The second respondent is a Trust formed by Mrs.Padmini Chandrasekaran. Mrs.Padmini Chandrasekaran executed a registered Will dated 30.09.1975 bequeathing her properties to a charitable trust formed by her in the name and style of N.Selvaradjalou Chetty Trust, the third respondent herein under a deed of trust dated 11.11.1972. She appointed Thiru.R.Krishnamoorthy, former Advocate General of Tamil Nadu and Shri H.B.N.Shetty, I.A.S., as the executors of the Will. The Trust was not aware of the suit filed by Mrs.Anusuya, mother of the petitioner and the decree passed by the Principal Sub-Court, Puducherry in O.S.No.18 of 1993.

4. The respondents 2 and 3 filed a suit in O.S.No.346 of 1994 before the Principal Sub-Judge, Puducherry for a decree of declaration that the judgment and decree dated 28.10.1993 in O.S.No.18 of 1993 is not est, inoperative and not binding. The suit in O.S.No.346 of 1994 was dismissed by the Principal Sub-Court, Puducherry by judgment and decree dated 30.08.2013.

5. The respondents 2 and 3 filed an appeal in A.S.No.32 of 2013 challenging the judgment and decree in O.S.No.346 of 1994.

6. The first respondent filed an application in I.A.No.903 of 2014 to implead him as a party to the appeal.

7. According to the first respondent, he is the son of late Krishnarajulu @ Krishnasami and he succeeded to the estate of his father. The first respondent contended that the petitioners are the children of Thiru. Velayutham and they have nothing to do with Anusuya, who obtained a decree in O.S.No.18 of 1993. The first respondent further contended that the petitioners herein are trying to deal with the property left by his predecessor in interest. The first respondent, therefore, wanted to implead him as a party to the appeal.

8. The application in I.A.No.903 of 2014 was opposed by the petitioners and respondents 2 and 3 by filing counter. The petitioners and the contesting respondents submitted that the scope of appeal is very limited and therefore, it is not necessary to implead the first respondent as a party to the proceedings.

9. The learned Principal District Judge, Puducherry allowed the application primarily on the ground that the first respondent has got right and interest over the properties left by his ancestors and his presence is therefore necessary for an effective adjudication of the appeal. Feeling aggrieved by the order dated 13.08.2014 in I.A.No.903 of 2014, the petitioners are before this Court.

Summary of Submissions:-

10 a) The learned counsel for the petitioners contended that the first respondent has nothing to do with the relief sought for by the respondents 2 and 3 in A.S.No.32 of 2013. According to the learned counsel, the remedy available to the first respondent is only to file an independent suit claiming right over the properties and not an application to implead him as a party in an appeal filed by the Trust against a decree refusing to set aside the decree declaring Mrs.Anusuya as the legal heir of Mrs.Padmini Chandrasekaran.

b) The learned Senior Counsel for the respondents 5 and 6 justified the impugned order. The learned Senior Counsel submitted that the petitioners have made a false claim over the properties inherited by the first respondent. According to the learned Senior Counsel, the presence of the first respondent is absolutely necessary for an effective disposal of the appeal and as such, the learned Appellate Judge was perfectly correct in impleading him as a party to the appeal.

c) The learned counsel for respondents 2 and 3 contended that the learned Principal District Judge allowed the application for impleading without understanding the nature and scope of appeal. According to the learned counsel, the issue before the Appellate Court was as to whether the Trial Court was correct in dismissing the suit filed by respondents 2 and 3 to set aside the decree in O.S.No.18 of 1993. The first respondent is neither a necessary nor a property party for an effective adjudication of the appeal.

Discussion :-

11. The respondents 2 and 3 filed a suit in O.S.No.346 of 1994 before the Principal Sub-Court, Puducherry against Mrs.Anusuya @ Muniyammal and Tmt.Ambujam to declare the decree dated 28.10.1993 in O.S.No.18 of 1993 as null and void. During the currency of the suit, the first defendant died and the petitioners were impleaded as her legal representatives.

12. Before the Trial Court, respondents 2 and 3 contended that Mrs.Anusuya, predecessor in interest of the petitioners filed a suit impleading the Government and fourth respondent as parties and obtained a decree fraudulently. Even though Mrs.Padmini Chandrasekaran bequeathed all her properties in favour of third respondent, the Trust was not made a party to the suit in O.S.No.18 of 1993. The plaintiff in O.S.No.18 of 1993 has withdrawn the suit against Union of India and the Tahsildar, Puducherry and obtained no objection from the fourth respondent, who was arrayed as second defendant. The respondents 2 and 3 therefore wanted to declare the collusive decree in O.S.No.18 of 1993 as non est and inoperative. The suit was contested by the predecessor in interest of the petitioners.

13. The learned Principal Subordinate Judge, Puducherry dismissed the suit primarily on the ground that respondents 2 and 3 have no *locus standi* to dispute the decree in O.S.No.18 of 1993. According to the Trial Court, the suit in O.S.No.18 of 1993 was for a declaration of legal heir ship and the Court granted a decree to the effect that Mrs.Anusuya is the legal heir of deceased Padmini Chandrasekaran. The Trial Court concluded that the Trust is not a legal heir of Padmini Chandrasekaran and as such, there is no question of setting aside the decree in O.S.No.18 of 1993 at its instance.

14. The decree in O.S.No.346 of 1994 was challenged by respondents 2 and 3 before the Principal District Court, Puducherry in A.S.No.32 of 2013.

15. The first respondent claiming that he is entitled to the property left by Mrs.Padmini Chandrasekaran filed the application in I.A.No.903 of 2014 to implead him as a party to the first appeal.

16. The alleged inter se dispute between the petitioners and the first respondent was not an issue in O.S.No.346 of 1994. Since the appeal in A.S.No.32 of 2013 is a continuation of the suit in O.S.No.346 of 1994, there is no question of deciding the said inter se dispute in the first appeal.

17. The learned Principal District Judge opined that the first respondent has right and interest over the property of his ancestors and without his presence, the suit in O.S.No.346 of 1994 was decided by the learned Principal Subordinate Judge, Puducherry. While arriving at such a conclusion, the learned District Judge omitted to consider the basic fact that the issue of title inter se between the petitioners and the first respondent was not an issue in O.S.No.346 of 1994. The only issue was as to whether the Principal Sub-Court, Puducherry was correct in passing a decree in O.S.No.18 of 1993 declaring the status of Mrs.Anusuya - Plaintiff in the said suit as the legal heir of Mrs.Padmini Chandrasekaran. The issue raised by the first respondent in I.A.No.903 of 2014 has nothing to do with the issue formulated by the respondents 2 and 3 in A.S.No.32 of 2013. The first respondent is claiming that he is entitled to the property left by Mrs.Padmini Chandrasekaran by

virtue of his relationship. The said issue cannot be decided in the appeal filed by respondents 2 and 3 against the judgment and decree in O.S.No.346 of 1994.

18. While considering the claim made by the first respondent, necessarily, the judgment in O.S.No.346 of 1994 requires to be considered. The learned Principal Sub-Judge, Puducherry dismissed the suit only on the ground that respondents 2 and 3 have no *locus standi* to dispute the decree in O.S.No.18 of 1993. In order to decide the said issue, the presence of the first respondent is not all necessary. In short, the first respondent is neither a necessary nor a proper party for an effective adjudication of the appeal.

19. The suit was filed in the year 1994. The suit was pending for a period of 19 years. The first respondent has not taken any action during the currency of the suit to implead him as a party, if he was really aggrieved.

a) The respondents 2 and 3 have taken substantial contentions in O.S.364/1994 with regard to the collusive decree obtained by Mrs.Anusuya in O.S.No.18/1993. According to the respondents 2 and 3, Mrs.Anusuya devised a fraudulent scheme by which she instituted the suit in O.S.18 of 1993 initially making it appear that Union of India was a necessary party. Though reference was made about the Trust, the fact remains that the Trust was not made a party to the suit. The plaintiff Mrs.Anusuya later not pressed the suit against

the Government. The only other defendant by name Mrs.Ambujam, fourth respondent herein endorsed No objection. The plaintiff therefore obtained a decree of declaration of her status as a legal heir of Mrs.Padmini Chandrasekaran, in respect of the properties left by her and not covered by the Will executed in favour of the second respondent, without there being a contest. It is the primary contention of respondents 2 and 3 that the suit in O.S.18 of 1993 was bad for non-joinder of necessary parties and that the decree was obtained by playing fraud on Court and that it was a collusive suit. These core issues were admittedly not considered by the Sub-Court in O.S.No.346 of 1994. The first Appellate Court is therefore bound to consider these issues in A.S.No.32/2013. In order to render a finding on various issues raised by the respondents 2 and 3 in A.S.No.32/2013 as indicated above, the presence of the first respondent is not all necessary.

b) The suit was filed in 1994 and it was dismissed in 2013. The first appeal was filed in 2013. The first respondent now wanted the respondents 2 and 3 to convert the appeal into one of title suit between him and the petitioners. In case the contention of the first respondent is accepted, necessarily, the matter should commence right from the beginning. He should be permitted to file written statement and thereafter, additional issues have to be framed and evidence should be adduced. The first appeal would be converted as a suit, not for the purpose of deciding the *lis* between the original plaintiffs and defendants, but to decide the inter se dispute between a

third party and defendants. Order 1 Rule 10 (2) of the Code of Civil Procedure is not intended for such purposes.

20. The first respondent, by impleading him as a party to the suit wanted to enlarge the scope of first appeal. The *inter se* dispute between the petitioners and the first respondent cannot be decided in A.S.No.32 of 2013. In short, the title claimed by the first respondent in respect of the property stated to have been left by Mrs.Padmini Chandrasekaran cannot be decided in the appeal filed by respondents 2 and 3 against the judgment and decree in O.S.No.346 of 1994 negating the plea to set aside the decree in O.S.No.18 of 1993, solely on the ground that the Trust is not a legal heir of Mrs.Padmini Chandrasekaran. This vital aspect was not considered by the learned District Judge while allowing the application filed by the first respondent.

21. The Supreme Court in **Muthavalli of Sha Madhari Diwan Wakf S.J. Syed Zakrudeen and another v. Syed Zindasha and others** reported in **2009 Scale Vol IV** considered the scope of Order 1 Rule 10(2) of the Code of Civil Procedure and observed that it would not be a sound exercise of discretion to implead a new party and thereby to enlarge the scope of dispute. The Supreme Court held as follows:-

"13. ...Even otherwise a civil court can direct impleadment of a third party in a suit only in a case where he is a proper or necessary party and otherwise have an interest in the subject

matter of the suit. Even civil court ordinarily would not entertain a petition for impleadment of a third party in a lis pending before it which would enlarge the scope and ambit of the dispute between the parties. A Civil Court would also not ordinarily implead a third party as a result whereof fresh dispute(s) either amongst the plaintiffs inter se claiming under the same title or the inter se between the defendants would be required to be determined."

22. None of the grounds taken by the first respondent in I.A.No.903 of 2014 would justify his impleading as a party to the first appeal preferred by respondents 2 and 3. I am therefore of the view that the learned Principal District Judge, Puducherry, erred in allowing the application in I.A.No.903 of 2014. The order impugned in this Civil Revision Petition is liable to be set aside. The petitioners are therefore entitled to succeed.

23. The order dated 13 August 2014 is set aside. The interlocutory application in I.A.No.903/2014 is dismissed.

24. The learned Principal District Judge, Puducherry is requested to dispose of the appeal in A.S.No.32 of 2013 as expeditiously as possible and in any case on or before 31 January 2016.

K.K.SASIDHARAN,J.

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In the upshot, I allow the Civil Revision Petition. No costs.
Consequently, connected miscellaneous petitions are closed.

25.11.2015

Index : Yes/No

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To

The Principal District Judge,
Puducherry

Pre-Delivery Order in

C.R.P.(NPD)No.395 of 2015