

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 13th DAY OF JULY 2015

THE HON'BLE MRS. JUSTICE S.VIMALA

A.No.5089 of 2014

in

C.S. No.209 of 2012

J.N.Ramji
Kuppu Arcade,
No.60, Venkata narayana Road,
T.Nagar, Chennai-600 017 ... Plaintiff

-Vs-

1. Ruchi Holdings (P) Ltd,
represented by Director Dr.Subhash Anand
having Registered office at House No.3173,
Sector 21D, Chandigarh-160022.

2.Subhash Anand
having office at House No.3173,
Sector 21D, Chandigarh-160022.

3.Capricon Holdings (P) Ltd represented by
K.Prabu, having office at
Old.No.39, New.No.86, Burkit Road,
T.Nagar, Chennai-600 017. ... Defendants

Civil Suit praying that this Hon'ble Court be pleased
to pass Judgment and decree (i) directing the defendants 1
and 2 to execute and register the sale deed along with 3rd
defendant in respect of suit schedule property after

receivingg the balance of sale consideration and put the plaintiff in possession.

(ii)for permanent injunction restraining the defendants 1 to 3 or anybody claiming through the said defendants or agents or representatives for alienating, encumbering, structurally altering or inducting any third party as a tenant, lessee or otherwise in the suit property

(iii) directing the defendants to pay the costs of the suit to the plaintiff.

A.No.5089 of 2014

Capricon Holdings (P) Ltd.,
rep.by K.Prabu
at Old No.39, new No.86, Burkit Road,
T.Nagar,
Chennai-600 017. ...Applicant/3rd Defendant

1.J.N.Ramji,
Kuppu Arcade,
No.60, Venkata Narayana Road,
T.Nagar,
Chennai-600 017.

...Respondent/Plaintiff

2. Ruchi Holdings (P) Ltd.,
rep.by its Director
Dr.Subhash Anand

3. Subhash Anand,
Respondents 2 and 3 are at
House No.3173, Sector 21D,
Chandigarh-160 022. ...Respondents/Defendants 1 & 2

Application praying that this Hon'ble Court be pleased to dismiss the above suit C.S.No.209 of 2012 against the 3rd

Defendant Capricon Holdings Private Limited

This Suit along with this application coming on this day before this court for hearing the court made the following order:

Whether the right of the plaintiff to remain as dominant litus, who cannot be compelled to fight against the party, whom he does not wish to fight and against whom he does not seek any relief, is available only at the time of filing of the suit or does it extend till the conclusion of the suit, is the issue canvassed. In other words, whether the plaintiff has got unguarded and unguided discretion in having his opponent on file, even after the filing of the suit, irrespective of the claim of the defendant / proposed party or his right is subject to the rules and regulations as prescribed under the laws, is the issue under cloud.

2. Civil Suit No.209 of 2012 has been filed by the plaintiff against defendants 1 to 3, seeking directions to defendants 1 and 2 to execute and register the sale deed, along with the third defendant, in respect of the suit schedule property, and to put the plaintiff in possession.

3. It is the case of the plaintiff that defendants 1 and 2 executed an agreement, dated 26.02.2009, agreeing to sell the property for a sale consideration of Rs.2.65 crores.

4. Subsequently, the plaintiff has taken out an application (A.No.4057 of 2014) seeking permission to amend the prayer in the suit and the amendment sought for is that defendants 1 and 2 should be directed to pay a sum of Rs.1,15,00,000/- as damages and compensation to the plaintiff towards breach of contract, instead of the relief of specific performance.

4.1. In this Application (A.No.4057 of 2014) the plaintiff has made an endorsement that the plaintiff is not pressing the original prayer in the suit and hence, the amended prayer may be taken on record.

5. Application No.4058 of 2014 has been filed seeking permission to raise additional pleadings, which are detailed in paragraphs 23(a) to 23(f), to be incorporated in the place of paragraph 23 in the plaint.

5.1. The sum and substance of the additional pleadings

sought to be raised are that: (a) in respect of the suit property, defendants 1 and 2 executed the sale deed in the name of the third defendant, but for a lesser consideration of Rs.1,40,00,000/- though the original consideration fixed with the plaintiff was Rs.2,65,00,000/-; and (b) the sum of Rs.1,15,00,000/- is payable to the plaintiff by defendants 1 and 2, as damages and compensation, on account of the breach of contract (by selling the property in favour of the third defendant) committed by defendants 1 and 2. Further, the specific pleading is that defendants 1 and 2 have committed fraud and mislead the third defendant and therefore, the plaintiff is not disputing the sale deed obtained by the third defendant from defendants 1 and 2 and therefore, the plaint should be amended as the one for compensation and damages at Rs.1,15,00,000/-.

5.2. When these Applications (A.Nos.4057 and 4058 of 2014) were opposed, the Applicant has made an endorsement that he is not pressing the Applications and in view of the endorsement made, the Applications have been dismissed as withdrawn.

6. Under such circumstances, the third defendant has come forward with an Application in A.No.5089 of 2014,

seeking dismissal of the suit as against the third defendant on the ground that: (a) ignorant of the sale agreement, dated 26.02.2009, in favour of the plaintiff by defendants 1 and 2, he has purchased the property, by a sale deed, dated 05.03.2012; (b) the plaintiff, who was in emergent need of money to discharge the loan from REPCO Bank, demanded a sum of Rs.10 lakhs towards expenses incurred by him in the Court and that after receiving the same, he executed a document stating that all the issues with regard to title of the property in C.S.No.209 of 2012 was settled and that he has no further claim against the scheduled mentioned property in C.S.No.209 of 2012; the relevant observation reads as under:-

"1. All the issues with regard to the title of the schedule property in C.S.No.209 of 2012 was settled in-between us and now the title of the schedule property is in your favour. ***I have no further claim against the schedule property*** mentioned in C.S.No.209 of 2012 from you. This matter will be submitted to the Honourable court in the above C.S.No.209 of 2012 through our advocate in proper manner.

2. However, as mutually agreed, I am proceeding against M/s.Ruchi Holdings Private Limited through C.S.No.209 of 2012 for the damages and return of advance in the above C.S.No.209 of 2012."

7. After making the stated endorsement, whether the plaintiff has the authority or locus standi to continue the suit as against the third defendant is the main issue raised in this Application.

8. The execution, truth and validity of the document, dated 14.05.2013, executed by the plaintiff is not in dispute. In view of this subsequent document, now the question is, whether the third defendant should be retained as such in the suit or he should be exonerated from the suit as claimed by him.

9. In order to answer this issue, the Court has to look into the fate of the Applications filed, just prior to this Application, i.e., what made the plaintiff to withdraw the Application which was filed to amend the prayer in the suit and an Application to make additional pleadings in the suit.

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10. Yet another issue is, whether the conduct of the plaintiff is justified in proceeding with the suit against the third defendant, when the plaintiff has accepted the

execution of the document, dated 14.05.2013, where-under, he has received a sum of Rs.10 lakhs for the purpose of exonerating the third defendant from the suit and also making a statement that he would proceed only as against M/s.Ruchi Holdings Private Limited (first defendant) for damages and for return of advance amount.

11. The learned counsel for the plaintiff would vehemently contend that the plaintiff, being dominant litus, is entitled to chose his own defendants and as against the wish of the plaintiff, the third defendant cannot be exonerated.

12. The scope of the maxim 'dominant litus' has to be understood in a proper perspective.

12.1. Normally speaking plaintiff is the dominant litis, and he is the master of the suit. He can choose parties to the suit as well as forum. He cannot normally be compelled to fight against a party whom he does not wish to fight and against whom he does not seek any relief. The question of addition of parties under Order 1 Rule 10 C.P.C. mainly not one of initial jurisdiction of the Court, but clearly of judicial discretion which has to be

exercised in the light of the facts and circumstances of each case. Therefore, in the light of the facts and circumstances of this case, whether the plaintiff has got unguarded and unguided discretion in choosing his own opponent, after the filing of the suit, or the discretion of the plaintiff is governed by the procedure, rules and regulations (prescribed under the Civil Procedure Code) is the issue canvassed.

13. To answer this issue, the relevant procedure prescribed under the Code of Civil Procedure has to be looked into.

13.1 Under Order 1 Rule 3 of the Code of Civil Procedure, which deals with joinder of defendants, the plaintiff must be able to show that the relief is claimable against all of them jointly, severally or in the alternative and that, it should be the outcome of the same cause of action. It is also necessary that the matter is so connected as to give rise to a common question of fact and law.

14. The plaintiff is expected to show that the

parties / proposed defendants are proper and necessary parties.

14.1. A necessary party means a party, whose impleadment in the suit is absolutely necessary for determining the controversy between the parties and in whose absence no decree can be passed.

14.2. A proper party on the other hand, denotes a party whose presence helps the Court in passing an effective decree and in completely deciding the rights and liabilities of the parties. In case of violation, the suit will be bad for mis-joinder / non-joinder of parties.

15. It would be appropriate to quote the decision reported in **Krishnan, S. v. Rathinavel Naicker reported in MANU/TN/9423/2006 : (2006) 4 MLJ 593**, where-under, the tests to be applied for determining the right of a party to implead have been highlighted. The relevant observations read thus:

"15. A party can also be impleaded when the relief prayed for in the proceedings is sought to be made binding on him or when it is felt that he would be adversely affected by the ultimate outcome of the proceedings. But in this case no relief is sought against the proposed respondents and the relief prayed for is also not intended to

be made binding on them. It is not even the case of the 1st respondent that the outcome of the proceedings would adversely affect the interests of the proposed respondents".

.....

17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending Suit or other proceeding, may be crystallized into the following categories:

- (a) If without his presence no effective and complete adjudication could be made;
- (b) If his presence is necessary for a complete and effectual adjudication of the dispute, though no relief is claimed against him;
- (c) If there is a cause of action against him;
- (d) If the relief sought in the Suit or other proceedings is likely to be made binding on him;
- (e) If the ultimate outcome of the proceedings is likely affect him adversely;
- (f) If his role is really that of a necessary witness but is sought to be camouflaged as a necessary party;"

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16. If the claim of the plaintiff is to get the sale deed executed by defendants 1 and 2, along with the third defendant, as per the original claim made in the suit can be pressed into service, then as per the parameters indicated above, the plaintiff can maintain the suit as against the third defendant also. But, in this case,

because of the subsequent event, where-under the plaintiff himself has executed the document, dated 14.05.2013, in favour of the third defendant and having obtained a sum of Rs.10 lakhs for withdrawal of the suit as against the third defendant, whether still the plaintiff can say he would maintain the suit as against the third defendant is the crucial issue.

17. From the affidavit filed by the third defendant, it is evident that in order to purchase peace the third defendant's father has purchased some other property of the plaintiff on 05.03.2012 and during that time the plaintiff has given a written undertaking that he would withdraw the suit as against the third defendant. Apart from that, the plaintiff has restricted his claim, by agreeing to seek the remedy of damages and return of advance amount from defendants 1 and 2, instead of seeking the relief of specific performance. This claim of return of advance amount and damages is not sought to be made as against the third defendant and it cannot be made also under the given context. Under such circumstances, when no relief is sought to be made as against the third defendant and when the presence of the third defendant would not be essential

either as a necessary party or as a proper party, in view of the subsequent development, clearly the suit is not maintainable as against the third defendant.

18. Therefore, the plaintiff is now estopped from claiming any relief as against the third defendant in C.S.No.209 of 2012. It is not the case of the plaintiff that either he did not receive Rs.10 lakhs or that he did not agree, not to proceed with the third defendant. It is his case that he would not proceed against the third defendant, but would proceed against only D-1 and D-2. Under such circumstances, the third defendant cannot be said to be a proper and necessary party. Hence, the suit is dismissed as against the third defendant.

19. Needless to point out that the Court has always powers to add or delete the party at any point of time. Order 1 Rule 10 (2) of the CPC, which empowers the Court to add or delete parties reads as under:-

"10. Suit in name of wrong plaintiff.- (1)

(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 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."

19.1. It may not be inappropriate to quote the dictum laid down in the decision reported in Savitri Devi v. District Judge, Gorakhpur and Ors. [MANU/SC/0122/1999](#): [1999] 1 SCR 725 wherein, the Apex Court has held that Order 1 Rule 10, C.P.C., enables the Court to add any person as party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the suit and avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

20. The plaintiff having received Rs.10 lakhs as consideration for withdrawal of the suit, as against the third defendant, and having agreed to restrict his claim, in respect of the relief (return of advance amount and damages) and in respect of the parties (defendants 1 and

2), cannot be permitted to say that it is his will and wish to retain the Applicant herein, as the third defendant. If due to turn of events or due to any other circumstance revealed during the trial of the suit, it is always up to the Court to add the Applicant herein as a party, if need be.

21. With this observation, this Application filed by the third defendant stands allowed.

sd/.S.V.J

13/07/2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/23.09.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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