

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD)No.4341 of 2011

and

M.P.No.1 of 2011

1.Kalaivani @ Devasena

2.Minor Rajeswari

..Petitioners

Vs.

1.Ramu

2.Saroja

3.Vivekanandan

4.Siva

5.Surendran

6.Pannerselvam

7.Sankar

8. Ayyappan

9.Maragatham

10.Malarvizhi

(R-9 set ex parte)

..Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 13.04.2005, in I.A.No.78 of 2011 in O.S.No.13 of 2004, on the file of the District Court, Perambalur.

For Petitioners : Mr.R.Siddharth
for Mr.T.R.Rajaraman

For RR1 to R3 : M/s.A.L.Ganthimathi

For RR5 & R6 : Mr.P.Valliappan

For R4, R77 & R10 : No appearance

ORDER

This Civil Revision Petition arises against the order dated 13.04.2005 made in I.A.No.78 of 2011 in O.S.No.13 of 2004, on the file of the District Court, Perambalur.

2. The petitioners/plaintiffs filed a suit in O.S.No.13 of 2004 before the Subordinate Court, Ariyalur. Thereafter, it was transferred to the Principal District Court, Perambalur. According to the revision petitioners/plaintiffs, the suit properties is a joint family property and therefore filed a suit for partition and separate possession.

3. The learned counsel for the petitioners submitted that the revision petitioners/plaintiffs have filed a suit in O.S.No.13 of 2004 praying for partition and separate possession declaring that the plaintiffs are entitled to 5/6th share in 'A' schedule properties and 5/18th share in 'B' and 'C' schedule properties, then pass a final decree, by metes and bounds and direct the defendants to render accounts, for property before the Subordinate Court, Ariyalur. Thereafter, it was transferred to the Principal District Court, Perambalur.

4. Pending the aforesaid suit, the revision petitioners/plaintiffs filed I.A.No.78 of 2001 under Order 1 Rule 10 151 of CPC, to implead the respondents 9 and 10 in the suit. In the aforesaid application, it was contended that proposed parties/respondents 9 and 10 are none other than the daughters of respondents 1 and 2 in the above revision. The suit being one for the partition, respondents 9 and 10/proposed defendants, being daughters of the respondents 1 and 2, are necessary parties for the proper conduct of the suit. Since the respondents 9 and 10 got married before the advent of Tamil Nadu Act 1/1990, they have no share in the suit "B" and "C" schedule properties, and they have not been made as parties in the suit.

5. Mr.P.Valliappan, learned counsel for the respondents 5 and 6 objected to implead respondents 9 and 10 as proposed defendants. In the above Application, the Trial Court has rightly come to the conclusion that the respondents 9 and 10 are not necessary parties for adjudication of the suit for partition.

6. Mrs.A.L.Gandhimathi, learned counsel for the first respondent/1st defendant filed a counter affidavit assailing the allegations made in the affidavit. She submitted that the petitioners themselves have stated that the proposed parties have

no share in the suit properties. Therefore, is no question of impleading them as additional defendants.

7. Mrs.A.L.Gandhimathi, learned counsel for the respondents 1 to 3 has no objection in allowing the application at this stage for impleading the respondents 9 and 10, however without prejudice to their rights to adjudicate the matter at the time of trial against the respondents 9 and 10. The Hon'ble Supreme Court in ***Balvant.Viswamitra and others Vs.Yadav Sadashiv Mule (dead) through his legal representatives*** reported in **2005 3 L.W Page 20** observed as follows:

The law on the subject is well settled: it is enough if we state the principles'. A necessary party is one without whom no order proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

8. Heard, Mr.R.Siddharth appearing on behalf of Mr.T.R.Rajaraman, learned counsel for the petitioners, Mrs.A.L.Gandhimathi , learned counsel for respondents 1 to 3 , Mr.P.Valliapan, learned counsel for respondents 5 and 6.

9. The learned counsel for the petitioners also relied on the judgment of ***Devaki Thiagarajan Vs. Ahamed*** reported in **2015(4) CTC 302**, in paras 54,62,63,71,71-a, which reads as follows:

54. In so far as the present Appeal is concerned, we would like to place it on record that the Principle of lis pendens embodied in Section 52 of the T.P.Act being a Principle of Public Policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking Notice of a title acquired during the pendency of the litigation. The mere pendency of a Suit does not prevent one of the parties from dealing with the property constituting the subject matter of the Suit. The Section only postulates a condition that the alienation will in no manner affect the rights of the other party under any Decree, which may be passed in the Suit unless the property was alienated with the permission of the Court.

62. The Object of the Order 1, Rule 10(2), C.P.C to implead a third party to the Suit is that the dispute in the Suit would be resolved in the presence of all, in Order to avoid multiplicity of proceedings.

63. Under Order 1, Rule 10, C.P.C, a party would become necessary party or proper party if he is having any interest over the subject matter of adjudication under the Suit and then he can be impleaded.

71. As aforesaid in the earlier paragraphs, the Respondents 2 to 5/Plaintiffs 1 to 4 have not alienated the Suit property in favour of the Appellant/proposed 5th Plaintiff with the permission of the Court. However, as argued by Mr.R.Thiyagarajan, since the Respondents 2 to 5/Plaintiffs 1 to 4 have allegedly sold the Suit property in favour of the Appellant/proposed 5th plaintiff, they might not show much interest or due diligence in conducting the trial of the Suit. Even if it is presumed that the Appellant/proposed 5th Plaintiff is not included as one of the co-Plaintiffs to prosecute the Suit as against the Respondents 6 to 9, she would definitely approach the Court of law with a new Suit, which would pave way for the multiplication of proceedings and only for the purpose of avoidance of any other litigation for the same subject matter, we have, therefore, decided that the Appellant/proposed 5th Plaintiff could be allowed to be impleaded as the 5th Plaintiff.

71(a). Further, we do not see any collusiveness between the Appellant/proposed 5th Plaintiff and the Respondents 2 to 5/Plaintiffs 1 to 4. Section 52 of T.P.Act is a substantive law, whereas the provisions of Order 1, Rule 10(2) of C.P.C., is a procedural law. Even though the Respondents 2 to 5/Plaintiffs 1 to 4 have not obtained prior permission to alienate the property, which is directly and substantially in question in the present Suit, Order 1, Rule 10(2) of C.P.C., empowers this Court to implead any party at any stage of the

proceedings either as Plaintiff or Defendant upon or without any Application of either party, whose presence appears to be necessary in Order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit.

10. The Hon'ble Supreme Court in ***Thomson Press (India) Ltd Vs. Nanak Builders and Investors Pvt Ltd., & Others*** reported in **(2013) 5 SCC 397** in paras 29,30,31, which reads as follows:

29. Section 52 of the Transfer of Property Act again came up for consideration before this Court in Rajender Singh Vs. Santa Singh and Their Lordships with approval of the principles laid down in Jayaram Mudaliar V.Ayyaswami reiterated: (Rajender Singh case, SCC p.711, para 15)

"15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it.

The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.

30. In the light of the settled principles of law on the doctrine of lis pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 Rule 10 empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.

31. Order 1 Rule 10 CPC reads as under:

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

Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(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.

11. The respondents 9 and 10 are the daughters of the respondents 1 and 2. So, the apprehension of the plaintiffs is that respondents 9 and 10 also have right to claim over the property by virtue of the Hindu Succession Amendment Act, 2005. A necessary party is one without whom no order can be made effectively; a proper party is one whose presence is necessary for a complete and final decision on the question involved in the proceedings. This Hon'ble Court decided in ***Ganduri Koteshwaramma & Another Vs. Chakiri Yanadi & Another*** reported in **2011 (6) CTC 102** has held as follows:

declaration in Section 6 that daughter of coparcener shall have same rights and liabilities in coparcenary property as she would have been a son

is unambiguous and unequivocal. There is no implement to pass more than one preliminary decree if after passing of preliminary decree events have taken place necessitating the readjustment of shares as declared in preliminary decree. The Court has always power to revise the preliminary decree or pass another preliminary decree if situation in changed circumstances so demand- Suit for partition continues after passing of preliminary decree and proceedings in Suit get extinguished only on passing of final decree- Respondents/Sisters are entitled to claim share in coparcenary property even after passing of preliminary decree in Suit for partition.

Therefore, Order 1 Rule 10 (2) empowers this Court to implead any party at any stage of the proceedings either as plaintiff or defendant upon or without any application of either party, whose presence appears to be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

12. Therefore, this Court is inclined to pass the following order:

a) the order passed in I.A.78 of 2011 in O.S.No.13 of 2004 dated 13.04.2005 is hereby set aside and

b) the trial court is directed to implead the respondents 9 and 10 as proposed defendants in the suit and Revision Petitioners/Plaintiffs has to take steps to make necessary amendment in the plaint in O.S.No.13 of 2004 on the file of the District Court Perambalur.

13. In the result, the Civil Revision Petition is allowed. After carrying out the amendment in the plaint, the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of copy of this order, on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

20.04.2016

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Index : Yes/No
Internet:Yes/No

To

1. The Subordinate Court, Ariyalur.
2. The Principal District Court, Perambalur.

D.KRISHNAKUMAR,J.

gv

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