



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (MD) (PD) No. 1797 of 2016

and

C.M.P. (MD) No. 8666 of 2016

A.B.T.Ltd.,

Coimbatore

rep. Through its Manager : Petitioner/1st Respondent / Defendant

Vs.

1.S.Shanmugam : 1st Respondent/Petitioner/Plaintiff

2.J.Selvakumar : 2nd Respondent/2nd Respondent/3rd Party

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.371/16 in O.S.No.243/2005 dated 11.04.2016 on the file of the Principal District Munsif, Valliyoor.

For Petitioner : Mr.H.Arumugam

O R D E R

This civil revision petition has been filed by the petitioner/defendant, to set aside the fair and decreetal order passed in I.A.No.371/16 and in O.S.No.243/2005 dated 11.04.2016 on the file of the Principal District Munsif, Valliyoor.

2.According to the learned counsel for the petitioner, the first respondent/plaintiff has filed a suit in O.S.No.243 of 2005 for preliminary decree of partition and for separate possession and also for permanent injunction, against the petitioner./defendant. During the evidence, the first respondent/plaintiff came to know that the proposed second respondent/second defendant had not sold the property to the first defendant/petitioner herein. Therefore, the first respondent/plaintiff filed an application in I.A.No.371 of 2016 before the learned District Munsif, Valliyoor, to implead the said Selvakumar, as second defendant in the suit. The said application was filed during the stage of cross examination of P.W.1 that too with a delay of 11 years. In spite of the objection raised by the revision petitioner, the trial Court allowed the said application and ordered to implead the second respondent as second defendant in the suit in O.S.No.243 of 2005. Against the said order, the present revision has been filed by the defendant.



3. Heard the learned counsel for the petitioner and perused the materials available on record.

WEB COPY

4. It is the case of the petitioner that the first respondent herein has filed a suit in O.S.No.243 of 2005 before the learned District Munsif, Valliyoor, to pass a preliminary decree and separate possession in respect of the suit property and for permanent injunction. The revision petitioner has filed written statement in the aforesaid suit. In the said written statement, the petitioner/ defendant has taken a plea of defence that he is not a proper party to the suit and the predecessors in title of this defendant are not added as parties to the suit and hence, the framing of the suit itself is wrong. The said suit was decreed exparte on 13.04.2010. Against the said exparte decree, the petitioner/defendant herein filed an application in I.A.No.721 of 2015, to set aside the exparte decree and the exparte decree was set aside on 07.12.2015 and thereafter, the trial was commenced. P.W.1 has been examined and at the stage of cross examination of P.W.1, the instant interlocutory application has been filed by the plaintiff, to implead the second respondent as second defendant in the suit. The trial Court, allowed the said application. According to the first respondent/plaintiff herein, the proposed second respondent/second defendant has not sold the property to the petitioner/defendant and he came to know that fact only at the time of evidence. The revision petitioner has raised the plea in the written statement that his predecessors in title have not been impleaded as party to the suit. Therefore, to avoid multiplicity of proceedings, the trial Court has allowed the application and impleaded the second respondent as second defendant in the suit.

5. At this juncture, it is appropriate to consider the decision of the Division Bench of this Court in Devaki Thiagarajan V. Ahamed reported in 2015(4) CTC 293, wherein, this Court has held 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 aforestated 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."

6.I also had an occasion to consider the same issue in *Kalaivani @ Devasena vs Ramu* on 20 April, 2016 in CRP(PD)No.4341 of 2011. Therefore, in the light of the above decision along with the facts of the present case, I am of the view that the trial Court has come to a correct conclusion and impleaded the second respondent as second defendant and the same does not warrant any interference of this Court and the civil revision petition fails and the same is liable to be dismissed.

7.Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif, Valliyoor.

+1 cc to Mr.H.Arumugam, Advocate in SR No.59050

Order made in
C.R.P.(MD) (PD)No.1797 of 2016
and
C.M.P.(MD) No.8666 of 2016
04.10.2016

ARUL

ANR/EM-MPA/01.11.2016/4P/3C