



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 16.09.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P (MD) No.1854 of 2016

and

C.M.P (MD) No.8901 of 2016

K.M.Ponnappan

2.Leela Impex(P) Limited,
through its Managing Director,
K.N.Ponnappan
No.8, Second Cross Street,
Venkatesa Nagar,
Virugambakkam,
Chennai - 600 092.

..Petitioners/Respondent/Defendant-
proposed second defendant

vs.

J.Bennet

..Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.200 of 2011 in O.S.No.81 of 2010, dated 1.6.2016, on the file of the Principal District Judge, Tuticorin.

For Petitioners :M/s.S.Subbiah

ORDER

The revision Petitioner has filed this revision challenging the order passed in I.A.No.200 of 2011 in O.S.No.81 of 2010, dated 1.6.2016, on the file of the Principal District Judge, Tuticorin.

2.According to the Petitioner, the respondent filed a suit in O.S.No.81 of 2010, on the file of the Principal District Judge, Tuticorin for recovery of a sum of Rs.1,12,40,142/- with 12% interest per annum till date of filing of suit and also with 6% interest from the date of suit till the date of realization of the principal amount of Rs.82,70,892/-.

3.Written statement was also filed by the defendant/K.M.Ponnappan. Thereafter the respondent herein/Plaintiff filed I.A.No.200 of 2011 before the Principal District Court, Thoothukudi to implead Leela Impex(P) Limited as second defendant in the suit. The proposed second respondent has filed a petition making objection for allowing the application to implead the revision petitioner as proposed second defendant in the suit. After considering the facts of the case and materials



placed before it, allowed the application. Against which, present Civil Revision Petition is filed by the revision Petitioner.

4. According to the learned counsel for the Petitioner, the suit document namely cheque bearing No.662429 dated 15.10.2016 had been issued only by the Leela Impex Private Limited, a company incorporated under the Companies Act, 1956, there is no personal liability upon the person, signing the cheque, on the basis of the instrument, so signed by the Managing Director of the company, the suit has been initially filed as against the first defendant alone and the company not having been made as the defendant as on the date of presentation of the plaint, any application to implead the company is barred by limitation. However the respondent has not shown any reason for impleading the second petitioner as a party to the suit merely on his whims and fancies, the second petitioner cannot be impleaded by way of abundant caution. Further, it is submitted by the learned counsel for the Petitioner that the plea of bar of limitation was specifically raised and also without any discussion by entering into facts, the suit is barred by limitation, if such plaint was presented as against the second petitioner on and after 17.10.2009. Therefore the suit itself is barred by limitation as against the second petitioner and the above said ground was not considered by the trial Court. Hence this Court is required to be interfered with the order passed by the trial Court.

5. Heard the learned counsel for the Petitioner and perused the materials on record.

6. The respondent herein filed a suit in O.S.No.81 of 2010 for recovery of a sum of Rs.1,12,40,142/- with 12% interest per annum till date of filing of suit and also with 6% interest from the date of suit till the date of realization of the principal amount of Rs.82,70,892/-. In the said suit, the respondent herein filed an application in I.A.No.200 of 2011 to implead the revision petitioner as second defendant in the suit. The trial Court has considered that the second defendant is also a necessary and proper party to the said suit. Therefore the said application was allowed.

7. In the light of the decision rendered by the Honourable Supreme Court in *Thomson Press (India) Limited .vs. Nanak Builders and Investors Private Limited and 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* *Murthy and 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.

8. 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 afore-stated 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.

9. 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. Therefore in the light of the decision cited supra and in the facts and circumstances of the case, the learned counsel for the Petitioner would submit that the contention of the revision petitioner that the suit itself is barred by limitation or maintainability or objections made by the first petitioner raised in the grounds can be agitated before the trial Court in the appropriate stage. Therefore the said ground cannot be support for the disposal of the impleading application filed by the plaintiff/J.Bennet, warranting interference with. In view of the above decision cited supra and in the facts and circumstances of the case, I am not inclined to interfere with the order of the court below and the revision is liable to be dismissed.

10. In view of the above, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS)

To

The Principal District Judge, Tuticorin.

+1cc to M/s.S.Subbiah, Advocate in SR.53009

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