

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD)No.2100 of 2017

Kuppusamy

.. Petitioner

Vs

1.Pappathi
2.Bakkiyalakshmi
3.P.Pushparaj
4.Sulochana

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 21.09.2016 made in I.A.No.464 of 2016 in O.S.No.637 of 2007 on the file of the First Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.D.Sathyaraj

For Respondents : Mr.M.Rajesh

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 21.09.2016 passed in I.A.No.464 of 2016 in O.S.No.637 of 2007 on the file of the First Additional Subordinate Judge, Coimbatore.

2. The first respondent is the first plaintiff and the revision petitioner is the defendant in the suit in O.S.No.637 of 2007 before the First Additional Subordinate Court, Coimbatore. The case of the petitioner is that the first respondent filed the suit for partition and for separate possession of her alleged 1/3rd share in the suit schedule properties against the revision petitioner. The revision petitioner filed a written statement in the year 2008. An additional written statement was also filed on 26.08.2008 and reply statement has been filed by the respondent on 19.01.2009. At this stage, the respondents /third party herein filed an application in I.A.No.464 of 2016 in O.S.No.637 of 2007 under Order 1 Rule 10(2) and Section 151 of C.P.C. to implead them as the parties in the aforesaid suit and the same was allowed on payment of cost of Rs.3,000/- to the legal aid and Rs.1,000/- to the petitioner. Challenging the aforesaid order, the petitioner has filed the present civil revision petition before this Court.

3. According to the learned counsel for the petitioner, the first plaintiff already filed a suit claiming share in the suit property. If any decree is passed in favour of the plaintiff, the other proposed parties are entitled to their respective shares, out of the shares allotted to the first respondent. At this stage, they are not necessary party to implead themselves as the party to the proceedings. The only intention of the first respondent is to protract and drag

on the proceedings. Therefore, the order passed by the Court below is liable to be set aside.

4. The first respondent filed an application in I.A.No.464 of 2016 to implead the respondents 2 to 4/proposed parties as necessary party in the said suit, since they are also entitled to their respective shares, out of the shares allotted to the first plaintiff. To avoid multiplicity of proceedings, the respondents 2 to 4 are also necessary party in the suit.

5. The first respondent filed a suit in O.S.No.637 of 2007 seeking partition and for separate possession. In the event of decree being granted in favour of the first plaintiff, the other proposed parties are entitled to their respective shares. At this stage, this Court cannot decide as to whether the proposed parties/ respondents 2 to 4 are also entitled to shares in the suit property as the same has to be decided by the trial Court in the suit. However, the instant application has been filed only to implead the respondents 2 to 4 as parties to the proceedings. Further, the dispute in the suit would be resolved only in the presence of all the stakeholders and in order to avoid multiplicity of proceedings, the impleading application is allowed.

8. Order 1 Rule 10(2) reads as follows:

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.

The Hon'ble Supreme Court in *Thompson Press (India) Ltd., Vs. Nanak Builders & Investors Ltd., & Others* reported in (2013) 5 SCC 397 at paragraphs 29, 30 and 31 has held as follows:

29. The aforesaid 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.

In Devaki Thiyagarajan Vs. Ahamed & Others reported in 2015 (4) CTC 293, the Division Bench of this Court at paragraphs 54,62,63,71,71 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 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.

9. 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 and in Order to avoid multiplicity of proceedings. Further in the light of the

decision of this Court in 2016 SCC Online Mad 26015 in J.Mallika @ Maheswari and another vs. 1.S.Kotteswaran and 7 others which reads as follows:

5. The petitioners are aggrieved primarily on the ground that the impleading parties are not having any interest in the suit property. The said question requires to be decided only during the course of trial. The suit is one for partition.

6. It is not as if the petitioners herein are bound to prove the negative. It is always open to the petitioners to file additional written statement in the light of the order impleading the respondents 2 and 3 as parties and the amendment to the plaint. I am therefore of the view that there is no merit in the contention taken by the petitioners with respect to the impleading of respondents 2 and 3.

In the facts and circumstances of the case and the decisions cited supra, there is no error which warrants interference of this Court in the order passed by the Court below.

10. In view of the above, the revision petitioner/respondent is permitted to file additional written statement, if any, and further the learned counsel for the petitioner undertakes to co-operate with the trial of the suit . Since the suit was filed by the respondent in the year 2007. The Sub Court,

D.KRISHNAKUMAR,J

kkd

Coimbatore is directed to dispose of the suit in O.S.No.637 of 2007, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

11. Accordingly, this civil revision petition is dismissed with the above observation. No costs.

05.12.2017

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Index : Yes/No

Internet : Yes/No

Note : Issue Order Copy on 12.12.2017

To

The 1st Additional Sub Court,
Coimbatore.

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