

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-06-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.855 of 2017
and C.M.P.Nos.4221 & 6986 of 2017**

1.Tmt.Radha Bai
2.Ramesh
3.Anandan
4.Dillibabu

...

Petitioners

Vs

1.Devaki Ammal
2.L.Chandru
3.TheChennai Metropolitan Water and
Sewerage Board
No.1, Pumping Station Road,
Chintadripet,
Chennai - 2.
4.K.Kandhan
5.Mr.K.Ravichandran
6.Mr.K.Sairam
7.S.Gopinath

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 08.02.2017 made in I.A.No.11488 of 2016 in O.S.No.8954 of 2011 on the file of the XIV Assistant City Civil Court, Chennai, rejecting to implead the pendite-lite purchaser as 9th defendant in the suit.

For Petitioner : Mr.K.Meenakshisundaram

For Respondents : Mr.P.K.Sabapathi for
RR1, RR2 & RR7.

ORDER

This Civil Revision Petition is filed against the order dated 08.02.2017 made in I.A.No.11488 of 2016 in O.S.No.8954 of 2011 on the file of the XIV Assistant City Civil Court, Chennai, rejecting to implead the pendite-lite purchaser as 9th defendant in the suit.

2. The petitioners are the defendants 1 to 4, the respondents 1 & 2 are the plaintiffs, third respondent is the 5th defendant, respondents 4 to 6 are defendants 6 to 8 and the 7th respondent is the proposed 9th defendant in the suit filed by the plaintiffs for permanent injunction restraining the defendants 1 to 4 from interfering with laying of pipelines by the 5th defendant for the water and sewerage connection to the house of the plaintiffs in E and F of the plaint.

3. The petitioners herein (defendants 1 to 4) filed written statement on 03.07.2014 and are contesting the suit. Trial commenced. Both the parties let in evidence and completed their evidence. The suit was posted for arguments. At that stage, the

petitioners herein filed I.A.No.11488 of 2016 to implead the 7th respondent as proposed 9th defendant in the suit. According to the petitioners the first respondent had executed a settlement deed dated 29.05.2015 settling the suit property to the 7th respondent and therefore she has no right to contest the suit and prayed for impleading the 7th respondent as 9th defendant in the suit. The respondents 1 and 2 filed counter affidavit and opposed the said application. According to them, the respondents 1 and 2 filed suit for injunction against the petitioners for not to interfere with their possession and enjoyment of the suit property. It is for the respondents 1 and 2 to prove their case that they are in possession and the petitioners are interfering with their possession. Though the first respondent settled the property on the 7th respondent, who is her grandson, the first respondent is in possession and enjoyment of the suit property. When the petitioners interfered with the possession of respondents 1 and 2, they filed suit for injunction restraining the petitioners and therefore prayed for dismissal of the application filed to implead the 7th respondent as 9th defendant in the suit.

4. The learned Trial Judge, considering the averments in the

affidavit, counter affidavit, nature of relief sought for by the respondents 1 & 2 and the arguments of the parties, dismissed the application holding that the 2nd respondent who is the owner of the suit property can maintain the suit and the issue to be decided in the suit can be decided in the absence of 7th respondent.

5. Against the said order of dismissal dated 08.02.2017 made in I.A.No.11488 of 2016 in O.S.No.8954 of 2011, the present Civil Revision Petition has been filed.

6. The learned counsel for the petitioners submitted that the 7th respondent is a necessary and proper party to effectively adjudicate the issue involved in the present suit. It is well settled law that the transferee pending suit must be added as a necessary party as the transferor would loose all her right and interest in the litigation. The Court below failed to consider the issues raised by the petitioners with regard to the merits of the case. The reasoning given by the learned Judge that the respondents 1 & 2, as *dominus litus* are entitled to implead the parties to the suit whom according to them are necessary parties. The said principle apply only at the time of filing of the suit and not for impleading parties subsequent to filing of the suit. The learned Judge has not properly considered

the scope and object of Order 1 Rule 10 CPC wherein the courts has been given power to implead proper and necessary party at any stage. The learned counsel for the petitioners relied on the following judgments in support of his case.

- (i) 2011 (3) MLJ 452 [M.K.M.Mohammed Nazar & Others]
- (ii) 2004 (3) LW 769 [V.L.Dhandapani v. Revathy Ramachandran & others]
- (iii) 2014 (4) LW 302 [Joseph Joys v. Jesu Jebamalai & others]
- (iv) 2015 (4) CTC 293 [Devaki Thiyagarajan v. Ahamed]

7. Per contra, the learned counsel for the respondents 1, 2 & 7 submitted that even though the first respondent has settled the property on her grandson, 7th respondent herein, she continues to be in possession of the suit property and she, alongwith the 2nd respondent is effectively prosecuting the case and in the nature of relief sought for in the suit, the 7th respondent is not a necessary or proper party to the suit. The learned counsel further submitted that the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. In those judgments, the subsequent transferees filed application for impleading and courts have allowed the application on the ground

of transfer, transferor party to the suit will not properly prosecute the case and therefore subsequent transferor or subsequent transferees are necessary parties. The Courts have held that subsequent transferees can be impleaded in order to avoid multiplicity of proceedings. The courts have discretionary power under Order 1 Rule 10 CPC to implead any person either as plaintiff or defendant at any stage of the suit if the court is of the view that such a person is a necessary party or proper party. In the said \circumstances, the 7th respondent is not a necessary party.

8. Heard the learned counsel for the petitioners as well the respondents and perused the records.

9. It is well settled law that subsequent transferee, pending suit can be impleaded at any stage by exercising discretionary power conferred on the court by Order 1 Rule 10 CPC. In the judgments relied on by the learned counsel for the petitioners, it has been held that Courts have discretionary power to implead subsequent transferee, mainly on the ground that after transfer, the transferor will lose interest in prosecuting the case which will affect the interest of subsequent transferee and in order to avoid multiplicity of proceedings. It is well settled law that the Court has

to consider the facts and circumstances of each case and only when the courts come to the conclusion that a person can be impleaded as a party to the suit, he can be impleaded.

10. In the present case, the respondents 1 & 2 have filed suit for permanent injunction restraining the petitioners from interfering with laying of pipelines by the 5th defendant for the water and sewerage connection to the house of the plaintiffs in E and F of the plaint. Pending the suit, the 1st respondent has settled her share of the suit property to the 7th respondent who is none other than her grandson and she has stated that she will be in possession of the suit property and she will continue to be in possession till her lifetime. This averment has not been denied by the petitioners. The 7th respondent has also filed counter alongwith respondents 1 & 2 and stated that he is not a necessary or proper party to the suit. In the said circumstances, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case and the 7th respondent is not a necessary and proper party to the suit.

11. Considering all these facts, the learned Trial Judge dismissed the application giving a cogent and valid reason,

exercising his powers conferred on him. There is no irregularity or illegality in the order of the Trial Court warranting interference by this Court.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. Since the suit is of the year 2011 and considering the fact that the trial had already commenced and the parties were examined, I direct the learned XIV Assistant Judge, City Civil Court, Chennai, to dispose of the suit in O.S.No.8954 of 2011, on merits and in accordance with law, as expeditiously as possible, in any event, not later than 31st August, 2017.

01.06.2017

Speaking/Non-speaking order
Index : Yes/No
rgr

V.M.VELUMANI, J.

rgr

To

The XIV Assistant Judge,
City Civil Court,
Chennai.

C.R.P. PD No.855 of 2017

01.06.2017