

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)Nos.1778 and 1853 of 2007
and
M.P.Nos.1 and 1 of 2007**

M/s.Tagore Financiers Rep. By
C.H.Venkateswara Rao,
M-78/6, 3rd Avenue,
Anna Nagar,
Chennai – 600 102. .. Petitioner in CRP(NPD)No.1778/2007

M/s.Deepti Financiers Rep. By
its Managing partner, Mr.Madhavarao Jasti
No.B-1, 52/54, Boag Villa,
B.N.Road, T.Nagar,
Chennai – 600 017. .. Petitioner in CRP(NPD)No.1853/2007

Vs.

1.K.S.Venkataraman

2.The Executive Engineer,
Tamil Nadu Housing Board,
Ashok Nagar, Chennai.

3.The Sub-Registrar,
Kodambakkam Sub-Registrar Office,
Kodambakkam,
Chennai. .. Respondents in both the CRPs

Prayer in CRP(NPD)No.1778 of 2007: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Decreetal Order dated 16.11.2006 passed in CMP.No.46 of 2005 in A.S.No.207 of 2005, on the file of the Additional District and Sessions Judge (IV Fast Track Court) at Madras.

Prayer in CRP(NPD)No.1853 of 2007: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Decreetal Order dated 16.11.2006 passed in CMP.No.42 of 2005 in A.S.No.203 of 2006, on the file of the IV Fast Track Court at Madras.

(In both the CRPs)

For Petitioners : Mr.P.Sreenivasulu

For Respondents : Mr.S.Thiruvengkatasamy (for R1)

No Appearance (for R2 and R3)

COMMON ORDER

These Civil Revision Petitions are filed as against the common order and therefore both the C.R.Ps are heard together and disposed.

2.The case of the petitioner in both the Civil Revision Petitions are that they filed a suit against one K.Babuji in O.S.No.6543 of 1986

and other suit in O.S.No.6542 of 1986 for recovery of money. Both the suits were decreed on 23.07.1987. For realization of decree amounts, the petitioner in both the Civil Revision Petition filed Execution Petitions against K.Babuji and in the said execution petitions order of attachment was made on 22.11.1988. Pending the Execution Petitions one Smt.Vijayalakshmi filed claim petition in E.A.No.297 of 1991. The said Smt.Vijayalakshmi is none other than the wife of K.Babuji, the Judgment Debtor in the above execution petitions. The said claim petition was dismissed. Against which the said Vijayalakshmi filed appeal in A.S.No.215 of 1999 before the learned IV Additional Judge, City Civil Court at Chennai and the said appeal was remanded back for fresh disposal. Again after fresh enquiry the claim petition filed by Smt.Vijayalakshmi was dismissed.

3.When the facts are being so, the 1st respondent herein has filed claim petitions in E.A.Nos.3695 of 2004, 3693 of 2004, 3690 of 2004, 3689 of 2004 and 2981 of 2004. The said claim petitions were resisted by the petitioner in both Civil Revision Petitions. After enquiry, the above claim petitions came to be dismissed by common order dated 31.01.2005. Against which the 1st respondent herein filed appeal in A.S.No.203 of 2005 against the petitioner in C.R.P.No.1853 of 2007

and A.S.No.207 of 2005 against the petitioner in C.R.P.No.1778 of 2007. Pending the above appeals, the 1st respondent herein filed five impleading petitions in C.M.P.Nos.42 to 46 of 2005 in A.S.Nos.203 to 207 of 2005.

4.It is the further case of the petitioners that the 1st respondent herein filed the impleading applications under Order 41, Rule 27 of CPC seeking to implead the Executive Engineer of Tamil Nadu Housing Board and the Sub-Registrar of Kodambakkam. The petitioner in both Civil Revision Petitions strongly objected to allow the impleading petitions. However, all the impleading applications were allowed by common order dated 16.11.2006. As against the order allowing the impleading petitions in C.M.P.No.42 of 2005, the petitioner herein namely M/s.Deepthi Financiers filed C.R.P.(NPD)No.1853 of 2007 and as against C.M.P.No.46 of 2005 the petitioner namely M/s.Thakoor Financiers filed C.R.P(NPD)No.1778 of 2007.

5.Whereas the case of the 1st respondent herein is that he has purchased the schedule mentioned property from one S.Prema under a registered sale deed dated 03.03.2004. Originally the schedule mentioned property was purchased by Smt.Vijayalakshmi from the

Tamil Nadu Housing Board by a virtue of a registered sale deed dated 25.10.1991. After that the said Vijayalakshmi sold the property to the said Prema and she in turn sold the same to the 1st respondent herein. The 1st respondent herein after coming to know that there is no encumbrance over the said property has purchased the schedule mentioned property. While so, on 26.04.2004 the court amine come to the house of the 1st respondent and informed that the property is being brought to action in the Execution Petition. Thereafter, only the 1st respondent herein came to know that the petitioner in the above CRPs obtained money decree against one K.Babuji. The 1st respondent herein was not aware of the suits filed against the said K.Babuji and decree obtained therein. Since the property was sold by the Tamil Nadu Housing Board to Smt.Vijayalakshmi and the said Vijayalakshmi is not a debtor and therefore the Tamil Nadu Housing Board is a just and necessary party to the appeal suits. Like that in the encumbrance certificate issued by the Sub-Registrar of Kodambakkam, there is no information with regard to the attachment order of the Court in respect of the schedule mentioned property. Therefore, the alleged communication order of attachment cannot be a true statement. Hence, the Sub-Registrar of Kodambakkam is also a just and necessary party to the above appeal suits. The lower Court has rightly

allowed the impleading applications and the same are not warranted interference by this Court. Hence, he prayed to dismiss this Civil Revision Petitions.

6.I heard Mr.P.Sreenivasulu, learned counsel appearing for the petitioners and Mr.S.Thiruvengatasamy, learned counsel appearing for the 1st respondent and no representation on behalf of the respondents 2 and 3 in both the Civil Revision Petitions and perused the entire materials available on record.

7.It is seen from the records that the petitioner in both Civil Revision Petitions filed money suits and obtained decree in their favour. In order to realise the decree amount both the petitioner filed E.P.No.966 of 1988 and E.P.No.1133 of 1988. Pending disposal of the above execution petitions one Vijayalakshmi filed claim petition in E.A.No.297 of 1991 and the same was dismissed. Even prior to that attachment order was made on 22.11.1988. The above said Vijayalakshmi is none other than the wife of K.Babuji. As against the dismissal of E.A.No.297 of 1991, the said Vijayalakshmi filed appeal in A.S.No.215 of 1999. The said appeal was remanded back to the Lower Court for fresh consideration. Again after remand the claim petition

filed by Smt.Vijayalakshmi was dismissed.

8.While so, the 1st respondent herein filed claim petitions in E.A.Nos.3695 of 2004 and 2981 of 2004 in E.P.No.966 of 1988 and E.P.No.1133 of 1988 respectively. Apart from that he has also filed three others claim petition and all the claim petitions were dismissed by a common order dated 31.01.2005.

9.It could be seen from the typed set of papers filed in this Civil Revision Petitions that as against the order of dismissal of claim petitions, the 1st respondent herein filed five appeal suits in A.S.Nos.203 to 207 of 2005 before the Additional District and Session Judge (Fast Track Court No.IV), Chennai. Pending disposal of the above appeal suits, the 1st respondent herein took out five applications in C.M.P.Nos.42 to 46 of 2005 to implead the Executing Engineer, Tamil Nadu Housing Board and the Sub-Registrar of Kodambakkam as respondents 2 and 3 in the above appeal suits.

10.According to the 1st respondent, the suit property was sold to his vendor's vendor Smt.Vijayalakshmi by the Tamil Nadu Housing Board. Therefore the Tamil Nadu Housing Board is the just and

necessary party to the appeal suits. The other arguments advanced by the Learned Counsel for the 1st respondent is that before purchasing the schedule mentioned property, he has verified encumbrance certificate and found that there is no such indication in the encumbrance certificate with regard to the alleged attachment order. Therefore, the Sub-Registrar of Kodambakkam is just and necessary party to the above appeal suits.

11.Per contra the learned counsel for the revision petitioners submitted that the revision petitioners obtained money decree against one K.Babuji and the above said Smt.Vijayalakshmi is none other than the wife of K.Babuji. Originally the schedule mentioned property was allotted the above said K.Babuji by the Tamil Nadu Housing Board and in order to defraud the claim of the revision petitioners, he transferred the allotment of the schedule mentioned property from his name to his wife's name. According to the Learned Counsel for the revision petitioners the Tamil Nadu Housing Board in pursuance of supoenia issued by the learned Xth Assistant Judge, City Civil Court, Chennai appeared before the Court and gave evidence and filed Exs.C1 to C7 in the claim petition filed by the wife of K.Babuji namely Smt.Viajayalakshmi. The Court below after going through the entire

records i.e. Exs.C1 to C7 filed by the Tamil Nadu Housing Board, has rightly dismissed the claim petition filed by Mrs.Vijayalakshmi by holding that her husband K.Babuji is the owner of the schedule mentioned property. Now the 1st respondent herein claiming to be the owner of the schedule mentioned property filed claim petition to the above execution petitions and the same were dismissed after elaborate discussion. He filed appeal suits as against the dismissal of claim petitions. Pending disposal of the above appeal suits, the 1st respondent herein filed impleading petition sought to implead the Executive Engineer of Tamil Nadu Housing Board and the Sub-Registrar of Kodambakkam as respondents 2 and 3 in the above appeal suits. The Court below by common order dated 16.11.2006 allowed the impleading petitions filed by the 1st respondent herein on the ground that for rendering proper and adequate justice between the parties, the respondents 2 and 3 herein are just and necessary parties to the above appeal suits.

12.The learned counsel for the revision petitioners would also submit that the 1st respondent herein filed the impleading petition under Order 41, Rule 27 of C.P.C., which is not the correct provision of law for impleading in the appeal suit and the correct provision of law is

Order 41, Rule 20 of C.P.C. He further submitted that as per Order 41, Rule 20 C.P.C., impleading application could be filed before the expiry of appeal period. But the 1st respondent herein filed the impleading application after the limitation period of appeal. This Court has carefully considered the above said submission of the learned counsel for petitioners. It is useful to extract Order 41, Rule 20:

**“Power to adjourn hearing and direct persons
appearing interested to be made respondents:- (1)**

Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

[(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to Costs as it thinks fit.]

13.As for as quoting wrong provision of law is concerned, it is a

settled proposition of law that mere quoting a wrong provision of law would not disentitle the party to get a relief if he is legally entitled. As rightly contented by the learned counsel for the revision petitioners, the 1st respondent herein ought to have filed the impleading application under Order 41, Rule 20 of C.P.C. Even assuming that he filed the impleading application by mentioning the correct provision of law, it should be filed before the expiry of the period of limitation for appeal. But in this case, the appeal suits were filed in the Month of March 21st of 2005 and the impleading petitions were filed on 05.09.2005. Therefore the impleading applications filed by the 1st respondent herein are barred by limitation. However, the Court below by invoking sub-rule (2) of Rule 20 of Order 41 allowed the impleading applications by imposing cost of Rs.200/-. In the considered opinion of this Court, the said exercise of the court below is not proper in the facts and circumstances of the case on hand.

14.Considering the other submissions on either side, this Court would find that there are infirmities and irregularities in the order allowing impleading applications by the Court below. The lower Court has not at all considered the earlier claim petition filed by the vendor's vendor of the 1st respondent herein namely Mrs.Vijayalakshmi and the

dismissal order of her claim petition. Further when the Execution Court after elaborate discussion has dismissed the claim petition filed by the 1st respondent herein by holding that he is not having title to the schedule mentioned property. This Court would come to the conclusion that the impleading applications filed by the 1st respondent herein in the appeal suits are only to drag on the proceedings. Further, this Court hold that the present impleading applications are filed by the 1st respondent herein only with a view to defraud the claim of the revision petitioners. The revision petitioners having got the decree in the year 1987 and got the order of attachment on 22.11.1988 are not in a position to enjoy the fruits of the decree.

15.At this juncture, it is to be pointed out that the 1st respondent herein has not taken steps to implead the respondents 2 and 3 herein in the claim petitions filed before the Execution Court. Further the 1st respondent failed to implead his vendor's vendor namely Mrs.Vijayalakshmi and his vendor Mrs.Prema. That apart the evidence adduced by the Tamil Nadu Housing Board in claim petition in E.A.No.297 of 2007 clingingly and categorically admitted that K.Babuji, the judgment debtor in all the above suits was the absolute owner of the execution petition schedule mentioned property. From the above it

is to be seen that the present impleading applications seeking to implead the Executive Engineer of Tamil Nadu Housing Board and the Sub-Registrar, Kodambakkam are not warranted and they are not necessary parties to the appeal suits.

16.From the discussions made above, this Court is of the considered view that the presence of the respondents 2 and 3 herein are not at all necessary for the effective adjudication of appeal suits and without their presence the appeal suits could be decided effectively. Therefore, the order of impleadment passed by the Court below is warranting necessity by this Court and it is liable to be set aside.

17.In the result:

a) both the civil revision petitions are allowed by setting aside the order passed in C.M.P.Nos.46 and 42 of 2005 in A.S.Nos.207 and 203 of 2006 respectively, dated 16.11.2006, on the file of the Additional District and Sessions Judge/ Fast Track Court, Madras.

b) the trial Court is directed to take up the appeals

on day to day basis without giving any adjournment to either parties and dispose of the appeals in A.S.Nos.208 and 203 of 2006, within a period of two months. Both the parties are hereby directed to give their fullest cooperation for early disposal of the appeals. No costs. Consequently, connected miscellaneous petitions are closed.

03.04.2017

Note:Issue order copy on 13.06.2017
Internet:Yes
Index:Yes

vs

To

The Additional District and Sessions Judge
(IV Fast Track Court) at Madras.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)Nos.1778 and 1853 of 2007
and
M.P.Nos.1 and 1 of 2007**

03.04.2017