



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2018

DELIVERED ON : 23.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.647 of 2015
and MP(MD) No.1 of 2015

K.R.S.Ponnuchamy Pandian ... Petitioner/1st Respondent/Plaintiff
vs

1.Velchamy
2.Shanmugam .. Respondent 1,2/Petitioner/Proposed Defendant
3.Balakrishnan .. 3rd Respondent/2nd Respondent/Defendant

Civil Revision Petitions filed under Article 227 of Constitution of India against the order dated 14.11.2014 passed in I.A.No.921 of 2011 in O.S.No.213 of 2010 on the file of the District Munsif Court, Kovilpatti, and allow the presend CRP.

For Petitioner : Mr.R.J.Karthick
for Mr.R.Subramanian

For Respondent : Mr.B.Rajesh Saravanan
for respondents 1 and 2

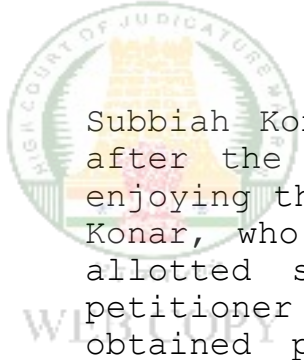
Mr.G.Thaveethu
for respondent No.3

ORDER

This Civil Revision Petition has been filed by the petitioner against the order dated 14.11.2014 in I.A.No.921 of 2011 in O.S.No.213 of 2010 on the file of the District Munsif Court, Kovilpatti, allowing the petition filed under Order 1, Rule 10(2) of C.P.C.

2. The respondents 1 and 2, who are third parties to the suit, have filed I.A.No.921 of 2011 under Order 1, Rule 10(2) of C.P.C. seeking to implead them as defendants 2 and 3 in the suit.

3. In the affidavit filed in support of the petition, the respondents 1 and 2 have stated that the petitioner herein has filed the suit against the third respondent for specific performance. In the suit schedule properties, 86 cents was allotted to the share of



Subbiah Konar, who was the father of the respondents 1 and 2 and after the demise of Subbiah Konar, the respondents 1 and 2 were enjoying the property. The third respondent was the son of Ramasamy Konar, who is the brother of Subbiah Konar and Ramasamy Konar was allotted some other property and he died on 19.9.1967. The petitioner and the third respondent with an ill-motive have jointly obtained patta bearing No.1400. After knowing the same, the respondents 1 and 2 have filed an appeal before the Revenue Divisional Officer, Kovilpatti and after an enquiry, the name of the third respondent was removed from the patta. Now the patta for the suit property and other property stands in the name of the father of respondents 1 and 2.

4. It is stated that based on the fraudulent patta, on 13.3.2010, the third respondent executed an agreement of sale in favour of the petitioner. On 22.9.2011, the second respondent lodged a complaint dated 26.8.2011 before the Superintendent of Police, Tuticorin for land grabbing and when the police enquired into the matter, it came to know that the petitioner has filed the suit for specific performance against the third respondent in respect of the suit property. It is also stated that with the collusion of the third respondent, the plaintiff has filed the suit. According to the respondents 1 and 2, the suit property belongs to them and it never belonged to the third respondent. Therefore, the respondents 1 and 2 are necessary parties to the suit.

5. Resisting the petition, the petitioner has filed counter stating that the respondents 1 and 2 have no right over the suit property. In fact, at the instigation of the third respondent only, the respondents 1 and 2 have filed the impleading petition. The respondents 1 and 2 are not necessary parties to the suit and the averments in the petition are concocted. Since the third respondent had failed to honour the agreement dated 13.3.2010, the petitioner has filed the suit for specific performance. Since the respondents 1 and 2 were not parties to the agreement, there is no need to implead them as parties to the suit. In order to protract the suit proceedings, the respondents 1 and 2 have filed the petition to implead themselves as parties to the suit.

6. The third respondent has filed counter contending that though the property stood jointly, they were enjoying the same separately. It is stated that if the respondents 1 and 2 have any claim over the suit property, they will have to file a separate suit and in this suit, they cannot be impleaded.

7. Before the trial Court, the first respondent examined himself as P.W.1 and Exs.P1 to P10 were marked. The petitioner examined himself as R.W.1 and Exs.R1 to R3 were marked.

8. Upon considering the oral and documentary evidence, the trial court allowed I.A.No.921 of 2011. Assailing the same, the petitioner has filed this Civil Revision Petition.



9. The learned counsel for the petitioner contended that the trial Court ought to have seen that the proposed parties were not parties in the sale agreement and hence in a suit for specific performance, a third party to a contract cannot be impleaded as a party. The learned counsel would contend that the trial Court ought to have seen that a suit for specific performance could not be enlarged to convert the same into a suit for title or partition.

10. The learned counsel submitted that the proposed parties were neither necessary, nor proper parties to the suit and it is always open for them to file a separate suit to declare their title or claim of partition, if any. He would submit that the trial Court ought to have seen that Order 1, Rule 10 C.P.C. enables the Court to add any person as a party at any stage of the proceedings if the person whose presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. In the present suit, by allowing the impleading petition, the nature and character of the suit gets altered and thus, prayed for setting aside the order of the trial Court. In support, the learned counsel for the petitioner cited the decision in Bagyalakshmi and others v. Kanagaraj and others, reported in 2017 (1) MWN (Civil) 647.

11. The learned counsel for the respondents 1 and 2 contended that the respondents 1 and 2 are not strangers and that they have got direct interest in the suit properties and therefore, they have to be heard in the suit for deciding the controversies and that the trial Court has assigned proper reasons for allowing the application and therefore, the same need not be interfered with. In support of his submission, the learned counsel for the respondents 1 and 2 relied upon the decision in V.Ravi v. P.V.Ravi v. V.Balakrishnan and 10 others, reported in 2009 (1) CTC 411.

12. I have carefully considered the submissions made by both sides and also perused the materials available on record.

13. The point that arises for consideration is whether the trial Court was right in ordering impleadment of the respondents 1 and 2 as defendants 2 and 3 in the suit.

14. The grievance of the respondents 1 and 2 before the trial Court was that the suit property belongs to them and in order to defeat their right, the petitioner and the third respondent colluded together and created an agreement and based upon the fraudulent agreement, the petitioner has filed the suit for specific performance. According to the respondents 1 and 2, the third respondent has failed to proceed with the suit and acting in favour of the petitioner and in fact, both the petitioner and the third respondent were playing fraud in getting the suit property from a decree of the Court. Therefore, for proper adjudication of the suit, the respondents 1 and 2 were necessary parties to the suit and



they will have to heard.

15. On the other hand, it is the say of the petitioner that if really the respondents 1 and 2 have any right over the suit property, they have to file separate proceedings and their alleged right cannot be decided in the present suit. Since the respondents 1 and 2 were not parties to the suit agreement, there is no necessity to implead them as defendants in the suit.

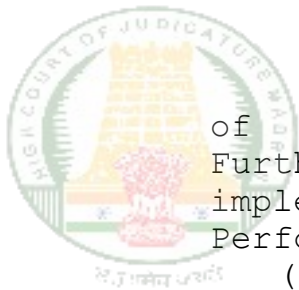
16. According to the third respondent, if the respondents 1 and 2 have any claim over the suit property, they have to file a separate suit and in the present suit, they cannot get any relief and therefore, they need not be impleaded as defendants.

17. Contending that the respondents 1 and 2 are proper parties in the larger interest of justice, the learned counsel for the respondents 1 and 2 has cited the decision of this Court in V.Ravi @ P.V. Ravi v. V.Balakrishnan and 10 others, reported in 2009 (1) CTC 411 supra, wherein, the learned Single Judge of this Court held as under:

"8. Generally, speaking in a Suit of agreement of sale, the parties to the agreement will be the necessary and proper parties. But in the instant case, the proposed parties/respondents 1 to 9 have taken the plea that respondents 10 and 11 viz., defendants 1 and 2 are not the sole owners of the suit property and they have got some right in the properties mentioned in the agreement. It is not out of place to point out that the proper parties are those whose presence before the Court will be necessary in order to enable the Court effectively and completely adjudicate upon all the real questions involved in the Suit although no relief in the Suit is claimed against such persons. Bearing in mind all these principles, this Court is of the considered view that the proposed parties/respondents 1 to 9 are proper parties in the larger interest of justice for vindicating their direct substantial interest in the suit properties and they cannot be considered as aliens although it is to be stated specifically by this Court that they cannot claim any relief of declaring their rights in the Suit filed by the revision petitioner/plaintiff and in that view of the matter, this Civil Revision fails and the same is hereby dismissed."

18. It is pertinent to point that earlier, I had an occasion to deal with an identical issue in Bagyalakshmi and others v. Kanagaraj and others, supra, wherein, I have held as under:

"22. On fair reading of the above said Judgments cited supra, for the impleadment of a Third party, in a Suit for Specific Performance, there must be a right to some relief against the party seeking impleadment, in respect



of the controversies involved in the proceedings. Further, the following tests must be satisfied to implead a Third party in a Suit for Specific Performance:

- (a) that there must be a right to some relief against such party in respect of the controversies involved in the proceedings; and
- (b) that his presence should be necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the Suit.

Impleadment of a Third party cannot be allowed to change the character or the nature of the Suit filed for Specific Performance of an Agreement for Sale. When the Plaintiff in the Suit for Specific Performance of the Agreement for Sale is the 'dominus litus' he cannot be forced to add parties, against whom he does not seek any relief, unless it is a compulsion of the rule of law.

.....

24. Apart from this, in a Suit for Specific Performance of a Contract for Sale the lis between the Purchaser and the Vendor shall only be gone into and it is also not open to the Court to decide whether the Third party have acquired any title and possession of the contracted property as that would not be germane for decision in the Suit for Specific Performance of the Contract for Sale."

19. In *Bharat Karasondas Thakkar v. Kiran Construction Co. and others*, reported in 2008 (5) MLJ 424 (SC), the Hon'ble Supreme Court held as follows:

"A Third party or a stranger to a Contract cannot be added as a party to a Suit for Specific Performance. The scope of a Suit for Specific Performance could not be enlarged to convert the same into a Suit for title and possession. A Third party or a stranger to the Contract could not be added so as to convert a Suit of one character into Suit for a different character."

20. The Hon'ble Supreme Court in the case of *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, (2010) 7 SCC 417 while dealing with an argument of a conflict between the decisions in *Kasturi v. Iyyamperumal*, reported in AIR 2005 SC 2813 and *Sumtibai and others v. Paras Finance Co., Mankanwar*, reported in 2007 (7) Supreme 2010, held as under:

"18. In *Kasturi*, this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a



right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

19. Referring to suits for specific performance, this Court in *Kasturi*, held that the following persons are to be considered as necessary parties:

(i) the parties to the contract which is sought to be enforced or their legal representatives;
(ii) a transferee of the property which is the subject matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

20. The first respondent contended that *Kasturi* held that a person claiming a title adverse to the title of defendant vendor, could not be impleaded, but the effect of *Sumtibai* would be that such a person could be impleaded; and that therefore, the decision in *Sumtibai* is contrary to the larger Bench decision in *Kasturi*.

21. On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1. This is made clear in *Sumtibai* itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay* (1992) 2 SCC 324 and *Anil Kumar Singh v. Shivnath Mishra* (1995) 3 SCC 147 also explain in what circumstances persons may



be added as parties.

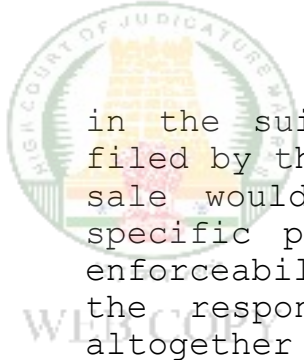
22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

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26. If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in *Kasturi* (2005) 6 SCC 733 and *Sumtibai* (2007) 10 SCC 82 are with reference to the facts and circumstances of the respective cases. In *Kasturi* (2005) 6 SCC 733 this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In *Sumtibai* (2007) 10 SCC 82 this Court held that a person having semblance of a title can be considered as a proper party. *Sumtibai* (2007) 10 SCC 82 did not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did *Kasturi* (2005) 6 SCC 733 lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party."

21. In view of decision of the Hon'ble Supreme Court in *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, supra, the decision in *V.Ravi @ P.V.Ravi v. V.Balakrishnan and 10 others*, supra, cited by the respondents 1 and 2 is not applicable to the case on hand.

22. Though the respondents 1 and 2 have produced Exs.P1 to P10 to show semblance of right over the suit property, as far as the present suit is concerned, they are third parties, say strangers to the contract. If the respondents 1 and 2 were added as defendants



in the suit, definitely the character and/or nature of the suit filed by the petitioner for specific performance of an agreement for sale would be changed. Since the present suit being one for specific performance, the only issue to be decided is about the enforceability of the agreement in question. The alleged right of the respondents 1 and 2 pertaining to the suit property is altogether a different matter to be agitated by them in an appropriate proceedings. Such being the position, I am of the view that the trial Judge has committed a serious error in impleading the respondents 1 and 2 as party to the suit.

23. For the foregoing reasons, the order of the trial Court allowing the application for impleadment of the respondents 1 and 2 in the pending suit for specific performance of contract for sale filed at the instance of third parties to contract would be illegal and liable to be set aside.

24. In the result, the Civil Revision Petition is allowed. The order dated 14.11.2014 passed in I.A.No.921 of 2011 in O.S.No.213 of 2010 on the file of the District Munsif Court, Kovilpatti is set aside. No costs. Consequently, M.P.(MD) No.1 of 2015 is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-III)

vsv

To

The District Munsif Court,
Kovilpatti.

+1cc to Mr.R.J.Karthick, Advocate in SR No.80191
+1cc to Mr.B.Rajesh Saravanan, Advocate in SR NO.80000

C.R.P. (MD) (PD) No.647 of 2015

NM/PM/SAR 3/10.10.18/8P/4C