

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.Nos.3657 to 3659 of 2014

CRP.PD.No.3657 of 2014

V.Santhanam

...Petitioner

Vs.

1.Uma Maheswari
2.Minor Kokulkrishnan
3.G.Sumathi

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the order dated 18.03.2014 passed in I.A.No.68 of 2014 in O.S.No.62 of 2013 by the learned Subordinate Judge, Arni.

CRP.PD.No.3658 of 2014

Ramalingam

...Petitioner

Vs.

1.Uma Maheswari
2.Minor Kokulkrishnan
3.G.Sumathi

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the order dated 18.03.2014 passed in I.A.No.69 of 2014 in O.S.No.63 of 2013 by the learned Subordinate Judge, Arni.

CRP.PD.No.3659 of 2014

Sasikala

...Petitioner

Vs.

- 1.Uma Maheswari
- 2.Minor Gokul Krishnan
- 3.G.Sumathi

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code to set aside the order dated 18.03.2014 passed in I.A.No.70 of 2014 in O.S.No.64 of 2013 by the learned Subordinate Judge, Arni.

For Petitioners : Mr.M.Raja Sekhar
For R1 & R2 : No Appearance
For R3 : Mr.A.Srinivasan

COMMON ORDER

The plaintiffs in O.S.Nos.62 of 2013, 63 of 2013 and 64 of 2013 on the file of the Sub Court, Arni are the petitioners in CRP.Nos.3657 of 2014 to 3659 of 2014 respectively. They preferred these Civil

Revision Petitions against the orders passed in I.A.No.68 of 2014 in O.S.No.62 of 2013, I.A.No.69 of 2014 in O.S.No.63 of 2013 and I.A.No.70 of 2014 in O.S.No.64 of 2013.

2.Originally all the petitioners herein filed a suit as against the respondents 1 and 2 and seeks the relief of direction directing the first and second respondents to pay the suit amount from their family property. Along with the plaint all the revision petitioners filed I.A. under Order 38 Rule 5 and Section 151 of Code of Civil Procedure and praying to attach the schedule mentioned property before judgment. For the said application, the respondents 1 and 2 being the respondents in the above referred application filed counter statement by saying as follows:

"This respondents / defendants submits that she undertakes that she will not alienate the property referred in the petition pending disposal of the main suit."

3.After giving undertaking as above, before disposal of the applications filed by the petitioners for attachment before judgment, the respondents 1 and 2 alienated the first item of the property in favour of one, G.Sumathi.

4.After made sale on 27.12.2013, the court below passed an order attaching the second item of the property alone in the petition filed by the petitioners under Order 38 Rule 5 of Code of Civil Procedure. Since the first item of the property was sold out, the court below refused to attach the first item of the property as requested by the petitioners. However, before passing the above order, in the month of January 2014, the petitioners herein filed an application under Order 1 Rule 10 (2) and Section 151 of Code of Civil Procedure to implead the subsequent purchaser G.Sumathi as third respondent in the application filed under Order 38 Rule 5 of Code of Civil Procedure.

5.The learned Sub Judge, Arni after receiving the objection from the proposed respondent by order dated 18.03.2014 dismissed the applications filed by the petitioners by saying whether the sale effected by the respondents 1 and 2 in favour of the third respondent is valid or not has to be decided only at the time of trial, for which impleading the proposed respondent as party is not necessary in the application filed under Order 38 Rule 5 of Code of Civil Procedure. Aggrieved over the said finding, the petitioners are before this Court with the present Civil Revision Petitions.

6.Since the issue to be decided in all the Civil Revision Petitions is one and the same, this Court has decided to pronounce a common order to all these three Civil Revision Petitions.

7.Today when the petitions came up for hearing, the learned counsel appearing for the petitioners and the third respondent are present.

8.The learned counsel appearing for the petitioners / plaintiffs would contend that even after giving undertaking in the written statement filed by the first and second respondents, only in order to evade the payment they sold out the property in favour of the proposed respondent, thereby for disposing the interlocutory application filed for attachment before judgment, the purchaser is a necessary party. But, the learned Sub Judge, Arni without appreciating the entire circumstances dismissed the applications, which is erroneous in law.

9.On the other hand, the learned counsel appearing for the third respondent would contend that the petitioners instead of filing application to implead the proposed respondent in the main suit, they

filed application only in the application filed by them for attaching the property vested with the family of the first and second respondents. So legally and logically without impleading the proposed respondent in the suit, filing application to implead the proposed respondent in an interlocutory application is found not correct.

10.Submissions made by the learned counsel on either side are considered.

11.In the impugned order passed by the learned Sub Judge, Arni, he has held the matter of undertaking given by the respondents 1 and 2 has to be decided only at the time of trial. Further he has held that since the property now under dispute is not attached before effecting the sale, the proposed respondent is not at all necessary party, thereby the petitions filed by the petitioners are not having any merits.

12.In this occasion, it is necessary to see Order 1 Rule 10(2) of Code of Civil Procedure, which reads as follows:

"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."

13. So, as per the said provision the court is having power to implead any party for the purpose of complete adjudication and to settle the questions involved in the suit.

14. Now, the question which has arisen before this Court is whether the proposed respondent is a necessary party for complete adjudication and to settle all the questions involved in the suit. In fact, the petitioners herein filed a suit based on the pro-note for the recovery of money from the first and second respondents. More than that, since the actual borrower is the husband of the first respondent, further case of petitioners is that he only availed loan from the petitioners. Therefore, the petitioners seeking the relief to recover the suit amount only from the property vested with the deceased Ezhumalai. So the real issue to be decided in the said suit is whether the deceased Ezhumalai is having property before his death and whether the said deceased Ezhumalai availed loan from the

petitioners. Only by saying that the property mentioned as item No.1 and 2 in the application filed for attaching the property is the property of the Ezhumalai, the petitioners filed the said application under Order 38 Rule 5 of the Code of Civil Procedure for attachment before judgment.

15.Though the respondents had undertaken in the counter affidavit as "they will not alienate the property referred in the petition", in the written statement filed before the trial court, they have stated that they have not alienated the inherited property of the deceased Elumalai. In the said circumstances, since the respondents 1 and 2 sold out the property against the undertaking made in the counter affidavit it has to be decided whether the undertaking given by the first and second respondents is enforceable only at the time of trial. So without deciding the value of undertaking given by the first respondent, it cannot be said that the proposed respondent is a necessary party to decide the suit. In otherwise, for passing decree in respect to the claim made by the petitioners / plaintiffs, the proposed respondent is not at all a necessary party. Only on that score, the learned Sub Judge, Arni while at the time of dismissing the application filed by the petitioners has held without filing any application to

implead the proposed respondent in the suit, filing application to implead as party in IA is not maintainable. So the said findings is well within the purview of the law. In fact, for determining the question who is the necessary party there are two tests. One, there must be a right to some relief against such party in respect to the matter involved in the proceedings and it should not be possible to pass an effective decree in the absence of such party. Applying the principles with the case in our hand, it is very easy for the learned Subordinate Judge, Arni to pass decree in the absence of the said party. However, the proposed party has purchased the petition mentioned property only during the pendency of the petition filed under Order 38 Rule 5 of Code of Civil Procedure.

16. In this occasion, it is necessary to see the judgment of the Hon'ble Apex Court in the case of **Sarvinder Singh Vs. Dalip Singh** reported in **(1996) 5 SCC 539**, in which our Hon'ble Apex Court has held as follows:

"A necessary party is one whose presence is absolutely necessary and without whose presence the issue cannot effectually and completely be adjudicated upon and decided between the parties. A proper party is one whose presence would be necessary to effectually and completely adjudicate upon the disputes. The

respondents cannot be said to be either necessary or proper parties to the suit in which the primary relief was found on the basis of the registered Will executed by the appellant's mother. The respondents could not challenge legality or validity of the said Will."

17. Accordingly, as per the principle laid down by our Hon'ble Apex Court, for settling the issue arising in the suit filed by the petitioners, the proposed respondent is not necessary party or proper party though the sale was effected during the pendency of the suit. In this aspect, in the same judgment the Hon'ble Apex Court has held as follows:

"Moreover, the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation would be hit by the doctrine of lis pendens by operation of Section 52. Under these circumstances, the respondents cannot be considered to be either necessary or proper parties to the suit."

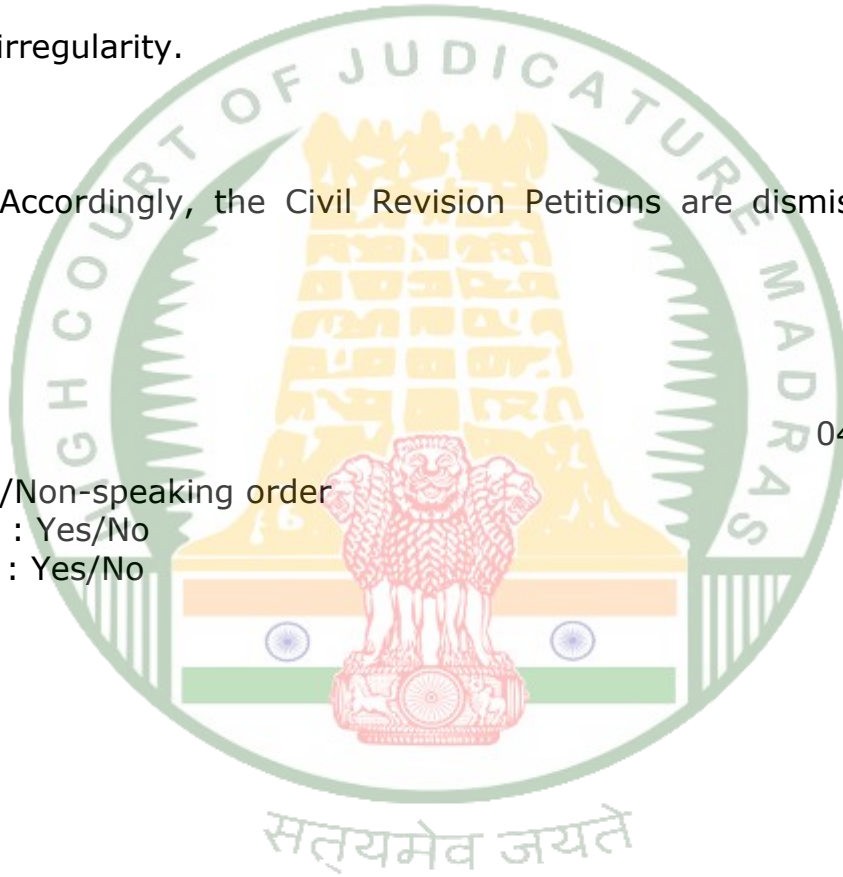
18. So in any event, by following the judgment referred above, the proposed respondent who is the subsequent purchaser of schedule

A property, is not necessary and proper party to decide the suit. Therefore, I am of the considered opinion that the orders dated 18.03.2014 passed in I.A.No.68 of 2014 in O.S.No.62 of 2013, I.A.No.69 of 2014 in O.S.No.63 of 2013 and I.A.No.70 of 2014 in O.S.No.64 of 2013 by the learned Sub Judge, Arni are not having any material irregularity.

19. Accordingly, the Civil Revision Petitions are dismissed. No costs.

04.11.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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R.PONGIAPPAN,J.

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To
The learned Subordinate Judge,
Arni.



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