



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.10.2019

CORAM:

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

CRP. (MD) .No.1552 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

1. Venkitachala Naicker
2. Rajagopal
3. Dhanasekaran

.. Petitioners/Defendants

Vs.

1. Sangilikalai
2. Gurusamy
3. Balakrishnan

.. Respondents/Plaintiffs

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.293 of 2011 in O.S.No.230 of 2007, on the file of the Additional District Munsif Court, Srivilliputhur, dated 25.08.2011.

For Petitioners : Mr.M.P.Senthil

For R-1 & R-2 : Mr.M.Karthikeyan

For R-3 : Dismissed vide order of
this Court dated 11.01.2019

O R D E R

The present Civil Revision Petition has been filed challenging the fair and final order passed by the Court below, allowing the application filed under Order 1 Rule 10 (2) of the Code of Civil Procedure, permitting the first and second respondents herein to be made as co-plaintiffs in the suit.

2. The third respondent herein filed a suit against the petitioners seeking for the relief of permanent injunction. During the pendency of the suit, he had sold the property in favour of the first and second respondents herein. Therefore, the first and second respondents filed an application seeking to make them as co-applicants in the suit. This application has been allowed by the Court below on the ground that no prejudice will be caused to the petitioners and it will avoid multicijpality of proceedings.



3. The learned counsel appearing for the petitioners submitted that the cause of action for the suit arose in the year 2007 and the relief of permanent injunction was sought for only with that cause of action. The subsequent sale in favour of the first and second respondents has taken place in the year 2010, during the pendency of the suit and therefore, the subsequent purchasers will not have any right to get themselves impleaded as co-plaintiffs for the cause of action, which happened in the year 2007. The learned counsel in order to substantiate his submissions relied upon the judgment of this Court in the case of **Kumaraguru Vs. Angu Naicker and others** reported in **2019 (2) MWN (Civil) 49**.

4. The learned counsel appearing for the respondents 1 and 2 submitted that no prejudice will be caused to the petitioners, if they are made as co-plaintiffs and multicipality of proceedings can be avoided. The learned counsel further submitted that the Court below has taken into consideration the objections raised by the petitioners and given sufficient reasons by allowing the application and there is no ground to interfere with the same.

5. It is an admitted case that the suit was filed in the year 2007 on the cause of action that is said to have taken place on 30.04.2007. During the pendency of the suit, the property has been sold by the plaintiff to the first and second respondents herein. Therefore, it has to be seen, whether based on the subsequent sale that has taken place during the pendency of the suit, the subsequent purchasers of the property can be made as co-plaintiffs.

6. It will be beneficial to rely upon the judgment cited by the learned counsel appearing for the petitioners in this regard. The relevant portion of the judgment is extracted hereinunder:-

"5.I have perused the order of the Trial Court. Admittedly, the Revision petitioner is pendente lite purchaser. He has purchased the property in the year 2007, which is after the filing of the present Suit. The original Plaintiff is still continuing the Suit. Though the transfer is taken place during the pendency of the Suit, such transfer is not void and is always subject to the result of the Suit. Pending Suit, the Purchaser cannot step into the shoes of original Plaintiff, as long as the original Plaintiff is prosecuting the Suit. Though Order 22, Rule 10 of C.P.C. enable the transferee to get the leave of the Court to continue the proceedings, such situation has not arisen in this case. The original Plaintiff is still prosecuting the Suit.

6. Therefore, this Court is of the view that he cannot be impleaded as a Plaintiff. The right to continue the



Suit arises only when the original Plaintiff has abandon the Suit, till such time, he could not be impleaded in the place of the Plaintiff to continue the Suit under the original cause of action alleged by the Plaintiff. Hence, this Court is of the view that at the most the proposed party can be added as one of the Defendant in the Suit and make out his defence. "

7. The facts of the present case is clearly covered by the judgment that has been referred supra. This Court is in complete agreement with the above judgment. When the original Plaintiff is already prosecuting the suit, the subsequent purchasers cannot implead themselves in the place of the plaintiff and they are bound by the result of the suit.

8. In the result, the fair and final order passed by the Court below in I.A.No.293 of 2011 in O.S.No.230 of 2007 dated 25.08.2011, is hereby set aside and accordingly, this Civil Revision Petition is allowed and the Court below is directed to complete the proceedings in O.S.No.230 of 2007, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1. The Additional District Munsif , Srivilliputhur.
2. The Record Keeper,VR Section
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-95130[F] dated 31/10/2019)

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25.10.2019

KK/SAR/14.11.2019/3P-5C/