

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition No.1847 of 2017
and CMP.No.1847 of 2017

1.S.Ramachandran
2.Ramanan
3.S.Sivaraman
4.S.Saraswathi
5.S.Jayalakshmi
6.S.Thangam

..Petitioners/Plaintiffs

Vs

1.The Chairman
Tamil Nadu Housing Board
Nandanam, Chennai-35

..1st defendant
/1st respondent.

2.C.Eswaramoorthy

..2nd defendant
/2nd Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 13.03.2017 in Memo in O.S.No.3749 of 2009 on the file of I Asst.City Civil Court, Chennai.

For Petitioners : Mr.K.Chandrasekaran

For Respondents : No representation

ORDER

The petitioners are the plaintiffs in O.S.No.3749 of 2009. The 1st respondent is the 1st defendant in the said suit. The 2nd defendant though not party in the original suit, subsequently, during the pendency of the appeal in A.S.No.234 of 2015, on the file of the III Additional District Judge, City Civil Court, Chennai, impleaded as 2nd respondent. Subsequently, plaint was amended vide order dated 30.06.2016 passed in I.A.No.13697 of 2015 and thus 2nd respondent/C.Eswaramoorthy was impleaded as 2nd defendant in the said suit.

2. The petitioners filed the suit in O.S.No.3749 of 2009 on the file of the 1st Assistant City Civil Court, Chennai, against 1st defendant/1st respondent originally. In the said suit, exparte dismissal decree was passed. Challenging the said exparte dismissal decree, the petitioners filed appeal before the 3rd Additional District Judge, City Civil Court, in A.S.No.234 of 2004. During the pendency of the appeal, the 2nd respondent was impleaded as 2nd defendant in the above appeal.

3. The petitioners also filed Interlocutory applications to receive the additional evidence and the learned 3rd Additional District Judge, set aside the judgment and decree passed by the learned trial Judge and directed the trial

court to give opportunity to both the parties and dispose of the case in accordance with law.

4. After remand of the matter to the trial court, the petitioners filed additional proof affidavit along with certain documents and marked additional documents. At that point of time, the 2nd respondent filed a memo stating that in so far as the 2nd respondent/2nd defendant is concerned, the suit is afresh, therefore, suit documents earlier marked need to be remarked to have probative value as against the second respondent/second defendant. In the said memo, the petitioners herein filed a reply stating that as per Order 1 Rule 10(5) CPC, suit as regards the newly added defendant shall be deemed to have commenced on the date when summons were served, wherein, the newly added defendant cannot agitate prior to his impleadment and also placed reliance on the judgments reported in 1999 (3) LW 888 [*Sengamalam v. The Idol of Arulmighu Ranganatha Swami, Srirangam*] and also 2001 (6) SCC page 534 [*Dhuran dhar Prasad Singh v. Jai Prakash University and others.*]

5. The learned trial judge, after considering the entire materials and also the decisions cited above, given a finding that the said decisions are not

applicable to the present case on hand. As far as 2nd respondent/2nd defendant is concerned, it is a fresh suit and also documents marked earlier need to be remarked. If the documents are remarked, no prejudice would be caused to the plaintiffs and allowed the petition.

6. Challenging the said order passed by the trial judge, in the above said memo, petitioners filed present CRP before this court.

7. The learned counsel for the petitioners would submit that as far as 2nd respondent/2nd defendant is concerned, he has been impleaded only at the later appellate stage of the proceedings i.e., during the pendency of the appeal. As far as newly added parties are concerned, the proceedings has to be continued where he joined and the earlier proceedings held, need not be reopened. The learned Judge failed to take into consideration Order 1 Rule 10(5) of the CPC and the decisions cited by the petitioners and therefore, the said order allowing to remark the documents, warrants interference.

8. There is no representation on the side of the respondents. Heard the learned counsel for the petitioners and perused the records.

9. Admittedly, the petitioners filed the suit against the 1st respondent alone in O.S.No.3749 of 2009 on the file of the 1st Assistant City Civil Court, Chennai. In that suit, the 1st respondent did not appear and set exparte. Therefore, exparte evidence was taken on the side of the plaintiffs. One S.Ramachandran as P.W.1 filed proof affidavit for chief examination and marked certain documents. No further evidence was examined. After closing the evidence of the plaintiffs, the trial court found that the plaintiffs had not proved the suit. Therefore exparte dismissal decree was passed.

10. Challenging the said exparte decree of dismissal of the suit, the petitioners filed appeal before the 3rd Additional District Judge, City Civil Court, Chennai, in A.S.No.234 of 2015 and also they have filed the application to receive the additional evidence. During the course of proceedings, the 2nd respondent was impleaded as party. After considering the entire materials, the appellate court decided that the 2nd respondent was necessary party in the suit and therefore, the learned Judge set aside the judgment of the trial court and remanded the said suit to the trial court to decide the case afresh.

11. At that point of time, the petitioners filed additional proof affidavit and marked additional documents. During that time, the 2nd respondent filed memo stating that as far as 2nd defendant is concerned, the suit is a fresh suit and the documents earlier marked needs to be remarked again. At that time, the counsel for the petitioners has objected stating that the 2nd respondent came to the proceedings only at the later stage, therefore, he cannot question the documents earlier filed. Therefore, the proceedings has to continued at the stage where he was impleaded as a party.

12. On a careful perusal of the records, it is seen that in the suit, the sole defendant was set *exparte* and only *exparte* evidence was taken. Even then, trial court dismissed the suit on a finding that the petitioners have not proved the case. Subsequently, during the pendency of the appeal, the 2nd respondent filed writ petition before this court and got the direction and subsequently, impleaded as respondent in the appeal in A.S.No.234 of 2015. At that stage, the appellate court set aside the Judgment and decree passed in O.S.No.3749 of 2009 and remanded the matter to the trial court to try the suit afresh. There is no quarrel over the legal proposition relied on by the learned counsel for the petitioners and the legal provisions in Order 1 Rule 10(5) of CPC. In general, in the event of subsequently added person who is a

subsequent purchaser and impleaded as party, he has to continue at the stage where he has been impleaded. He cannot reopen earlier proceedings. However, in this case, suit itself was set exparte and subsequently, it was dismissed. Therefore, once the said decree is set aside and directed the trial court to try the suit afresh, and thereafter, filed written statement, trial has to start afresh and therefore, evidence taken and the documents marked in exparte stage cannot be continued. Once the exparte decree is set aside, then the petitioners have to start the suit afresh. They have to file fresh proof affidavit and the document has to be remarked afresh and therefore, there is no reason to interfere with the order passed by the trial judge.

13. There is no quarrel over the decisions relied on by the learned counsel for the petitioners. But the facts and circumstances of the case is entirely different. Therefore, the authorities cited by the learned counsel for petitioners will not apply to the facts of the present case on hands and therefore, revision is liable to be dismissed.

14. In view of the foregoing discussion, this Civil Revision Petition is dismissed. The trial court is directed to take evidence of plaintiffs afresh and opportunity to be given to the 2nd respondent/2nd defendant for cross

examination and trial has to be completed in accordance with law. No costs.

Consequently, connected miscellaneous petition is closed.

27.07.2020

Index: Yes/No
Internet: Yes/No
nvsri

To

- 1.The I Asst.City Civil Court, Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras



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P.VELMURUGAN,J.

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