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C.R.P(MD)No.508 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2023

Delivered on : 08.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.508 of 2020

Raja Ebanesar Sam

... Petitioner/Respondent
/Plaintiff

Vs.

1.Ramkumar

... 1st Respondent/Petitioner
/Proposed 2nd Defendant

2.Mayakannan

... 2nd Respondent/2nd
Respondent/Defendant

3.Amirthameena

... 3rd Respondent/3rd
Respondent/Defendant

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.01.2020 passed in I.A.No.936 of 2018 in O.S.No.106 of 2017 on the file of the learned Additional Sub-Judge, Srivilliputhur.

For Petitioner

:Mr.I.Suthakaran

For Respondents

:Mr.M.Thirunavukkarasu



ORDER

The revision petitioner/plaintiff has preferred the present revision petition against the fair and decreetal order, dated 30.01.2020 passed in I.A.No.936 of 2018 in O.S.No.106 of 2017 on the file of the learned Additional Subordinate Judge, Srivilliputtur.

2.The brief facts, leading to the filing of this Civil Revision Petition, are as follows:-

The petitioner/plaintiff has filed a suit in O.S.No.106 of 2017 for recovery of money based on a registered mortgaged deed, dated 11.03.2016 against the second defendant, who is the sole defendant in the said suit. During the pendency of the above suit, the third party respondent moved an application in I.A.No.936 of 2018 for impleading himself and his Aunt Amirtha Meena as necessary parties to the suit.

3.According to the third respondent/proposed 3rd defendant herein, the suit property originally belonged to her maternal grandfather Mookaiahya Nadar by virtue of a sale deed, dated 17.04.1996. It is a self acquired property of the said Mookaiahya Nadar, who was in possession and enjoyment of the suit property by constructing a brick house and also obtained electricity service connection to the said house. On 21.09.2006, the said Mookaiahya Nadar died interstate. Thereafter, the wife of Mookaiahya



Nadar viz., Lakshmiammal along with the proposed defendant viz., Amirthameena were residing in the house in the suit property. Taking advantage of this, the said Amirthameena executed a Relinquish Deed on 24.03.2011 without the knowledge of the second respondent/defendant. Thereafter, on 06.04.2011, the said Lakshmiammal died. Whiles, on 11.03.2016, the first respondent/second defendant mortgaged the suit property in favour of the plaintiff herein and borrowed a sum of Rs.7 lakhs. Since the first respondent failed to repay the said loan with interest, the plaintiff filed a suit for recovery of money based on the above registered mortgaged deed. When the above facts came to the knowledge of the proposed respondents/defendants, they took out an application to implead themselves in the above suit as necessary parties, since they have interest in the suit property as the LRS of the Mookaiahya Nadar.

4.The contention of the respondents/proposed defendants is that the said relinquished deed executed between the proposed defendant and the said Lakshmi is not valid in the eye of law. Without the inclusion of the other legal heirs of Mookaiahya Nadar, and the consent of other legal heirs of Mookaiahya nadar and also the mortgaged deed executed in favour of the plaintiff by the first defendant is also not valid and the consequential deed executed by the first defendant in favour of the plaintiff is not valid and is liable to be set aside. The said property being a joint family property, in



which, the respondents/proposed defendants are equally entitled for their share. The said relinquish deed and the mortgage deed are not valid in the eye of law. Hence, the proposed respondents/defendants are necessarily to be impleaded in the above suit to put-forth their contention.

5.The claim of the respondents/proposed defendants was resisted by the plaintiff on the ground stating that he filed a suit for recovery of money, borrowed by the first defendant, based on a mortgaged deed, dated 11.03.2016. Since the defendant failed to repay the loan amount with interest, the plaintiff was constrained to file the above suit for recovery of money. Thereafter, the third party respondent, filed an interlocutory application in the suit only to drag on the proceedings and to defeat the claim made by the plaintiff in the above suit.

6.The trial Court, after perusing the averments made by the respective parties in their petition, counter affidavit and the arguments advanced by the respective parties, allowed the above application. Aggrieved over the same, the present revision petition is filed by the petitioner/plaintiff.

7.The learned counsel appearing for the revision petitioner/plaintiff would submit that the Court below has wrongly exercised its judicial discretion by allowing the third parties application to implead themselves in



the suit for recovery of money, based on the registered mortgaged deed filed by the petitioner/plaintiff, without considering the facts and circumstances of the case.

8. According to the learned counsel for the revision petitioner, the petitioner/plaintiff has filed a suit in O.S.No.106 of 2017 for recovery of money based on a simple mortgage deed in which, the claim for partition made by the proposed parties cannot be decided. He would further submit that it is settled legal proposition that a proper party is one without whose presence the question in the suit cannot be completely and effectually adjudicated upon. If he is neither a necessary party nor a proper party, the Court has no jurisdiction to add him as a party like in the case of the petitioner/plaintiff. The learned counsel further submitted that a person is not to be added as a defendant merely because he/she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court effectually and completely adjudicate upon and settle the question involved in the suit. If the question at issue between the parties can be worked out without anyone else being brought in, a stranger should not be added as a party. The learned counsel further submitted that the Court below had failed to take note of the fact that the interlocutory application was filed after a lapse of two years from the knowledge of the proposed parties and no explanation was given



by them for the laches. Hence, the order passed in I.A.No.93 of 2018 dated 30.01.2022 is liable to be set aside by allowing this revision petition.

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9.To support his contention, the learned counsel appearing for the revision petitioner relied upon the following decision in Application No. **3697 of 1996 in C.S.No.625 of 1994, dated 17.04.1997(R.R.Square-vs-Shobalatha Debi)**, in which, it is held that,

“If parties come to Court seeking for impleading one after another during the course of the proceedings, it will be next to impossible to keep on adding the parties and in such event the suit can never come to an end. In the above circumstances, I am of the view that the application for impleading respondents 2 to 4 as defendants 2 to 4 in the suit has to be rejected and accordingly, the application is dismissed.”

10.On the other hand, the learned counsel appearing for the proposed respondents/defendants would submit that the respondent/proposed defendant is certainly a proper party and the trial Court was justified in exercising its jurisdiction under Order 1 Rule 10(2) of C.P.C, 1908 for impleading the respondents/proposed defendants as parties in the suit. The respondents/proposed defendants were entitled to be impleaded as a party to safeguard their right in the suit property.



11.To support of his contention, he has relied upon the following decision:

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(i)In ***Dhanlakshmi and Others-vs-P.Mohan and Others*** reported in ***(2007) 10 Supreme Court Cases 719***, in which, it is held that,

“held, the said parties are necessary and proper parties in a partition suit filed by a co-owner – Transfer of property Act, 1882 – S. 52 – Applicability – Doctrines – Doctrine of lis pendens – Applicability – Civil Procedure Code, Or.1 R.10”

(ii)In ***Baluram-vs-P.Chellathangam in Civil Appeal Nos. 10940-10941 of 2014 (Arising out of SLP (C) Nos.996-997 of 2013)***, in which, it is held that,

“15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will



not make such person a necessary party or a proper party to the suit for specific performance.”

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12.This revision petition is filed against the order of the learned Additional Sub-ordinate Judge, Srivilliputtur, allowing the application filed by the respondents/proposed defendants for impleading themselves as defendants in suit filed by the petitioner/plaintiff in O.S.No.106 of 2017 for recovery of money based on a simple mortgage deed.

13.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

14.The contention of the learned counsel appearing for the revision petitioner is that the respondents/proposed defendants are neither necessary nor proper parties in a suit for recovery of money based on a simple mortgage deed. Hence, the application for impleading the respondent/proposed defendants as a party could not be entertained ought not to be entertained by the Court below.

15.On the other hand, the learned counsel appearing for the respondents/proposed defendants vehemently submitted that the respondents/proposed defendants are certainly proper parties and the trial



Court was justified in exercising its jurisdiction under Order 1 Rule 10(2) of C.P.C., 1908 for impleading the respondents/proposed defendants as parties to the suit.

16. Before I proceed further, it is necessary to set out the relevant provisions under Order 1 Rule 10(2) of C.P.C., 1908;

“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.”

17. The learned counsel appearing on either side relied upon some of the decisions, which have considered ambit of the power of the Court in impleading a person as a proper party to the suit and explained the proper amendment of the word of the questions involved in the suit. The decisions illustrate the validity of the instance when the intention by way of impleading of parties has been allowed and when refused and from those



decisions it is neither feasible nor advisable to let down any instant settlement of the principles governing the discretionary power of the Court within the suit.

18. Whether the proposed defendants are necessary parties or proper parties, whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate upon and settle down all the questions involved in the suit.

19. The revision petitioner is against the order of the Additional Subordinate Judge, Srivilliputhur, allowing the application filed by the first respondent/proposed 2nd defendant for impleading himself as a supplemental defendant in the suit in O.S.No.106 of 2017 filed for recovery of money.

20. According to the respondents/proposed defendants, the suit property is a joint family property in which, the respondent/proposed defendants are the members of a joint family and therefore, the mortgage deed executed by the defendants in the suit in favour of the plaintiff would certainly affect the legal rights of the respondent/proposed defendants. Hence, the respondents/proposed defendants filed an application in I.A.No. 936 of 2018 to implead themselves in the above suit. The claim of the respondent/proposed defendants was resisted by the revision



petitioner/plaintiff stating that the remedy available to the proposed defendants is only to enforce their rights by filing a separate suit and that they cannot be impleaded in the present suit to complicate the suit with unconnected disputes and issues. It is further submitted that the proposed defendants after a lapse of two years in spite of having knowledge about the said mortgage entered between the plaintiff and the defendants, filed an application in order to malafide intention to deny the legal rights of the petition/plaintiff.

21.The Rules relating to the joinder of parties are based on the principles of avoiding multiplicity of suits, not merely to avoid waste of time and money, but also to prevent possible conflict of decisions, and that to justify the impleading of a party, it is not necessary that he should be interested in all the reliefs and all the questions arising between the plaintiff and other defendants. The underlying principles regarding the addition of parties is that there must be finality to litigation and to secure that purpose it would be incumbent upon the Court to add a party whose presence would be necessary to put an end to all the controversy in the litigation finally.

22.However, in the present case, the suit filed by the plaintiff is only for recovery of money based on a simple mortgage deed. All the questions involved in the suit are only the question of dispute between the parties to the litigation and it will not include question or dispute between the one or



more parties and the third party. The defendant in the suit executed a simple mortgage in favour of the petitioner/plaintiff. The claim of the petitioner/plaintiff in the suit is that the defendant executed a simple mortgage in favour of the petitioner/plaintiff and borrowed a sum of Rs.7 lakhs and since he failed to repay the loan amount the petitioner/plaintiff filed the suit for recovery of money against the original defendant. The claim of the respondents/proposed defendants is that they have right over the property mentioned in the plaint. In that factual matrix even if there is any legal right in favour of the respondents/proposed defendants, their remedy is only to enforce their rights by filing a separate suit and they cannot be impleaded in the present suit so as to complicate the suit filed with an unconnected disputes and issues. Therefore, the presence of proposed defendants is not required in the present suit for a complete and effective adjudication.

23.In view of the above, this Civil Revision Petition is dismissed and the order dated 30.01.2020 passed in I.A.No.936 of 2018 in O.S.No.106 of 2017 by the learned Additional Sub-Judge, Srivilliputhur, is confirmed. No costs.

24.Considering the fact that the suit is of the year 2017, the Additional Sub-Judge, Srivilliputhur, is directed to dispose the suit on



merits and in accordance with law, as expeditiously as possible, within a period of six months from the date of receipt of a copy of this order.

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08.08.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
To

- 1.The Additional Sub-Judge,
Srivilliputtur.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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