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Court : Chennai

Decided On : Oct-13-1981

Reported in : (1982)2MLJ296

Appellant : Rajagopal

Respondent : Sankaran and ors.

Judgement :

ORDER

S. Swamikkannu, J.

1. The point regarding jurisdiction as well as the point relating to failure to give notice, do not weigh with this Court for admitting this civil revision petition at this stage of I.A. No. 141 of 1981. On the other hand by impleading a party, it should be held that notice is given such that he is given an opportunity to put forth his case before the Court. If he is not impleaded, then there may be grievance. But, in this case the party is now impleaded, and certainly there is going to be notice given on whatever that is alleged against him. Inasmuch as he has been now impleaded as a party, on that ground this civil revision petition cannot be admitted. The other point that is raised is that it is only Tiruchi Court which has got jurisdiction and institution of the suit in the Tirunelveli Court is beyond the scope, and what is more, it is now strangely argued by the learned Counsel for the petitioner that the ratio imbedded in Roy and Chatterjee (P.) Ltd. v. Scindia Steam

Navigation Co., Ltd. and Anr. : AIR1961 Mad367 , has not been followed by the lower Court in pronouncing the order in I.A. No. 141 of 1981 which order is the subject-matter of this civil revision petition. In the above decision, it was held that in order to bring a third party on record, under Order 8-A, Rule 1, it is not necessary that there should be a privity of contract between the plaintiff and the third party but the defendant seeking to do so should establish that the claim between them was capable of adjudication by the Court and was within the jurisdiction of that Court. Rule 2 of Order 8-A enables the third party to raise all grounds to the action as could be available to him as against the party defendant who seeks to bring him on record. If the party defendant sued the third party in a separate action, such third party would be entitled to raise the question of the jurisdiction of the Court in defence. Such a defence would also be open to the third party in the application to implead him as a party. Where the third party carried on business at Vishakapatnam and the party defendant who seeks to bring him on record in the suit also carried on business at Vishakapatnam, and the contract as between them relating to the delivery of scrap iron was entered into and was fulfilled at Vishakapatnam, it was held that the Court at Madras, where the suit was instituted, had no jurisdiction to enquire into the claim and therefore, the party could not be impleaded.

2. In the instant case, I.A. No. 141 of 1981 in O.S. No. 403 of 1979 was filed by the defendant seeking to issue third party notice under Order 8-A, Civil Procedure Code. The suit was based on pronote admittedly executed by the defendant in favour of one Ramakrishnan for a sum of Rs. 19,000. The defendant admittedly paid Rs. 10,000, towards the pronote under an endorsement, dated 7th August, 1976. While so, the said Rama-krishnan passed away on 5th April, 1977. The plaintiffs are his widow and minor daughter. They claim the balance with interest amounting to Rs. 17,094-10. One of the contentions of the defendant as raised in the written statement is that he paid Rs. 10,000 under receipt issued by Rajagopal, father of Ramakrishnan father-in-law of first plaintiff. This was not conceded by the plaintiffs. Now the defendant wants to issue third party notice to the said Rajagopal, the father-in-law of the first plaintiff. The said petition was resisted before the lower Court by the plaintiffs on the ground that Order 8-A is not applicable to the case and the amount alleged to have been paid to Rajagopal was

at Tiruchi and beyond the jurisdiction of the said Court and as such the petition could not be sustained. It was further contended by the plaintiff that the petition was highly belated and is calculated to protract the proceedings.

3. On the point whether the petition can be sustained, the lower Court had dealt with the Illustration given at page 481 in Volume IV of the 4th Edn. in A.I.R. . : AIR1961 Mad367 , which is now referred to by the learned Counsel for the petitioner at this stage in this Court.

4. I have carefully looked into the order of the lower Court which is now the subject-matter of civil revision petition. I find, there is absolutely no merit in the petition that is now filed for interference under Section 115, Civil Procedure Code. There is no merit in this civil revision petition and as such it is liable to be dismissed at the stage of admission itself and as such it is dismissed.

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