

M. Ramanathan Vs. M. Vasantha and ors.

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Court : Chennai

Decided On : Oct-21-2003

Reported in : (2004)1MLJ3

Judge : Prabha Sridevan, J.

Acts : Code of Civil Procedure (CPC) - Sections 115

Appeal No. : Civil Revision Petition (PD) No. 723 of 2003 and C.M.P. No. 4530 of 2003

Appellant : M. Ramanathan

Respondent : M. Vasantha and ors.

Advocate for Def. : T. Ravikumar, Adv. for R1

Advocate for Pet/Ap. : V. Raghavachari, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

Prabha Sridevan, J.

1. The revision petitioner sought to be impleaded in O.S. No. 1141 of 1994 filed by the first respondent against the respondents 2 to 9. The application I.A. No. 627 of

2002 filed by the petitioner was dismissed and therefore, this revision.

2. Learned counsel for the petitioner submitted that he is the purchaser of the suit property and therefore, he is a necessary party. The first respondent filed the suit for 'directing the defendants 1 to 5 to deliver the possession of the suit property to the plaintiff/trustee.' According to the learned counsel for the petitioner, there was no trust and the trust deed dated 27.11.1992 makes no mention of the suit property. According to the learned counsel for the petitioner, the suit property belonged to one Somasundaram. He had executed a Will on 8.6.1990 and after his death, it had devolved upon his grand children and the petitioner had purchased the suit property under three sale deeds dated 15.3.1996, 4.5.1996 and 2.8.1996. The vendors in the sale deeds were grand children of Somasundaram, who are not parties to the suit and therefore, the dismissal of the application on the ground that the purchase made by the petitioner is lis pendens is not correct. It was also submitted by the learned counsel for the petitioner that if a decree is granted to the first respondent, then his valuable right will be directly affected and therefore, he should be impleaded. According to the learned counsel for the petitioner first respondent and the other respondents are family members and they may collude and cheat the bonafide purchaser namely, the petitioner and deprive of him his right, title and interest in the suit property. The following decisions were relied on:-

(i) Savitri Devi v. District Judge : [1999]1SCR725

(ii) R. Rathinavel Chettiar v. V. Sivaraman : [1999]2SCR313

(iii) Bakthavatsalam v. Anjapuli 2001 (1) CTC 19

3. Learned counsel for the first respondent on the other hand would submit that the petitioner is not a necessary party to the suit. He had 'purchased' litigation. The first respondent had effected a paper publication in 1995 that this property was a trust property and that any purchase will be at their own risk and in spite of that the petitioner had purchased the suit property. He would also submit that the pronouncements of this court as well as the Supreme Court have been to the effect that a purchase pendente lite is not a necessary party. According to the

learned counsel, the court below had rightly dismissed the application. Learned counsel for the respondent relied on the following decisions:-

(i) Bakthavatsalam v. Anjapuli (2001(1)CTC 19)

(ii) Abdul Aziz v. District Judge : AIR1994 All167

(iii) Sarvinder Singh v. Dalip Singh : (1996)5SCC539

(iv) R.R. Square etc., v. Mrs. Shobalatha Debi 1997 2 L.W.691 and

(v) E. Somasekaran & another v. Kanchana & others 2003 3 L.W.773

4. The factual background is this: The suit was filed on 20.10.1994. On 24.10.1994, the first respondent issued a notice to the Commissioner, Madurai Municipal Corporation, not to include the names of the defendants in the Revenue Records on 9.11.1995, the publication in 'Thinamalar' was effected. In 1996, the sale deeds in favour of the petitioner are said to have been executed. On 10.2.1999, an exparte decree was passed. Thereafter, an application was filed to set aside the exparte decree and the same was allowed. On 7.10.2002, the present application has been filed.

5. The plaint and the written statement filed by the second defendant have been included in the typed set of papers. According to the plaint, there was one Subbu pillai, who was performing the poojas at the Sithi Vinayakar Temple and doing several charitable deeds. Somasundaram was the son of Subbu pillai and a trust was created called 'Manickam Pillai Kumarar Subbu Pillai Muthammal Trust'. On 7.10.1992 the suit property was purchased and on 27.11.1992 a trust deed was executed. After Somasundaram's death, the seventh respondent Balasundaram and the first respondent became the trustees. Since the seventh respondent converted to Christianity, the first respondent became the sole trustee. Somasundaram had two wives. The respondents 2 to 6 are the children through the first wife. The respondents 1 to 7 are the children of the second wife. The respondents 8 and 9 are the tenants. Since the respondents 2 to 6 were unlawfully collecting the rent from trust property, the suit was filed.

6. The third respondent herein, who is the second defendant filed written statement. He denied the averments in the plaint and also denied the existence of the trust. According to him, Somasundaram purchased only the site and the third and fourth respondents put up superstructure. The first respondent never became the trustee. Even during the life time of Somasundaram, the respondents 2 to 4 in possession and enjoyment of the suit property. The seventh respondent and the first respondent are not the sons of Somasundaram. Their mother was a Christian. The only legally wedded wife of Somasundaram is the mother of respondents 2 to 6. Respondents 3 & 4 to 8 adopted this written statement.

7. In the affidavit filed by the petitioner, in I.A. No. 627 of 2002 it is stated that Somasundaram had executed a Will on 8.6.1990. He died on 7.2.1993 and therefore, the beneficiaries viz., the grand children became the absolute owners of the suit property. By registered sale deeds, he had purchased the property. Only recently he came to know about the pendency of the suit and since neither the first respondent nor the other respondents have any title or possession and since they are colluding with each other, he prayed that he may be impleaded as the 9th defendant.

8. Copies of the sale deeds have also been filed in the typed set of papers. In the sale deed dated 15.3.1996, the vendors are the children of the second respondent and one of the vendors is a minor and the second respondent has executed the document, as the guardian. One of the witnesses to the sale deed is the fourth respondent. In the sale deed dated 4.5.1996, the vendors are the minor sons of the third respondent, who has executed the document as their guardian. In the sale deed dated 2.8.1996, the vendors are the minor children of the fourth respondent and fourth respondent has executed the document as their guardian. One of the witnesses is the wife of the fourth respondent.

9. This, then is the case pleaded by the parties to the dispute. In *Savitri Devi v. District Judge* : [1999]1SCR725 the Supreme Court held that the transferee pendente lite of an interest in immovable property is a necessary party. But in that case, the circumstances were otherwise. The suit was filed by the mother against her four sons for decree of maintenance. Interim injunction was ordered. Vakalath

was filed purportedly on behalf of the defendants and also an affidavit expressing their consent undertaking not to alienate the property. Thereafter there were alienations. It was stated that as the sales were in breach of the order of injunction was granted. The alienees were impleaded as defendants in the suit. In the order impleading the third parties, reference was made to an application filed by the first defendant that the fourth defendant had forged the signature and filed a bogus vakalath nama. It was only after taking note of these facts that the trial court impleaded the alienees. The Supreme Court held that Order 1 Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. The Supreme Court categorically stated and held in *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay* : [1992]2SCR1 , that the assignees need not be impleaded as parties to the suit. In : [1999]1SCR725 after referring to the decision in : [1992]2SCR1 , it was observed that the said ruling has no application whatever is the case on hand. As stated earlier, on the facts in *Savitri Devi's* case the impleadment of respondents 3 to 5 as parties to the suit was warranted, since fraud and forgery were alleged to have been committed. Therefore and in those circumstances, the impleadment was upheld. This cannot be a ratio applicable to all cases, where alienees want to be impleaded in the suit.

11. In *Bakthavatsalam v. Anjapuli* 2001 (1) CTC 19 this Court held that any alienation subsequent to filing of suit is hit by Doctrine of 'Lis Pendens' and the application for impleading respondents 4 to 6 as defendants in suit as well as in final decree proceedings are rejected. But this decision may not come to the aid of the respondents, because the suit was one for partition and therefore, even without impleadment, the rights of the purchaser may be adjusted.

12. In *Rajammal v. Periyannayagam & others* 2003 3 L.W.62 this court held that the subsequent purchaser is not a necessary party to the final decree proceedings, as the purchase is hit by Section 52 of the Transfer of Property Act. This also arose

out of a suit for partition.

13. In *E. Somasekaran & another v. Kanchana & others* 2003 3 L.W.773 this Court held that the purpose of the application for impleading is to drag on the proceedings by transferring the suit property from one hand to another. Savitri Devi's case was brought to the notice of the court and the learned Judge distinguished it by holding that there the alienee was a bonafide purchaser, but when the modes operandi shows that the sales are only to protract the proceedings, impleadment must be rejected.

14. In 1997 2 L.W.691 this Court held that a court has no jurisdiction to add a party, unless it is a necessary or proper party,

'The principle for impleading a third party to a proceeding is avoidance of multiplicity of proceedings and hence the court has no jurisdiction to add a party, unless it is a necessary or proper party. A necessary party is one without whom no order can be made effectively and a proper party is one whose presence is necessary for a complete and final decision on the question at issue can be worked out without anyone being brought in, a stranger should not be added to the litigation. The eventual interest of the party in the fruits of the litigation cannot be held to be a true test of impleading the parties according to the Code of Civil Procedure.'

In : (1996)5SCC539 , the Supreme court held that the defendants are prohibited by operation of Section 52 of the Transfer of Property Act from alienating the property. The alienation would be hit by the doctrine of lis pendens and the respondents cannot be considered to be either necessary or proper parties to the suit.

15. In the present case, the first respondent had taken all steps necessary to make public, her case that the property belonged to the trust, whether she is able to establish that it will depend upon the result of the suit. So one has to take it that the public was put on notice about the lis. So the petitioner will have to prove that he had no notice. The other objection that the vendors are not parties to the suit is also not free from difficulty. The documents have been executed by the fathers

who are the defendants in the suit, though it was allegedly on behalf of the minors. It has been held in various decisions, that the theory of dominus litus cannot be strictly adhered to. Some times the parties may be impleaded, if the outcome of the litigation will affect them and if their presence is necessary for adjudicating the issues that were notwithstanding the objection of the plaintiff.

16. But this case is different. In this case, if the impleading is ordered, the plaintiff will have to fight out a totally new case, which is contrary to her own case. This cannot be permitted. The plaint does not speak of a Will. The plaint only speaks of the trust and the fact that there was entrustment of the property. The written statement does not speak of the Will, which ought to have been the first ground of defence to disprove the trust. The written statement does not speak of the bequest in favour of the grand children. The written statement does not speak of the title of the grand children; The written statement merely denies the trust and asserts the right of the defendants to be in possession of the property. So if the first respondent/plaintiff proves the existence of Trust, she must succeed. But if the petitioner is impleaded, the first respondent will have to prove that the purchase is not bonafide, that the sale is lis pendens and more importantly prove that there is no Will or that the Will is not genuine. It was repeatedly urged on behalf of the petitioner that he alone will be able to establish that there was no trust. This cannot be accepted. The non existence of the trust is the main theme of the written statement. But even if the defendants have not raised this as an issue, on that ground, the petitioner cannot be impleaded. The first respondent cannot be asked to fight a battle, which she did not set out to fight.

17. Two objections raised by the petitioner must also be met. The petitioner's fear is that the parties will collude and throw him out and that this is a mock battle. This is not correct. The respondents 2 to 6 question the first respondent's fraternity. : [1999]2SCR313 where colluding parties withdrew the suit nullifying the substantial right of the third party transferee was relied on to support the case. That does not apply here. On mere apprehension, a party cannot be impleaded. Further the first respondent asserts the rights of a trustee excluding her brother and step brothers. The step brothers have alienated the property, though as guardians. It is difficult to accept that it is a mock battle.

18. Another objection is that the trust deed does not mention the suit property and so the suit property is not a trust property and can be bequeathed. This is on the merits of the case. If the first respondent cannot prove the trust or the endowment, she will fail. The court does not need the petitioner's aid to decide this issue which is the only issue.

19. Further the Will is prior to the sale deed under which Somasundaram purchased the suit property. So, 'The right title and interest' which is claimed to be in jeo pardy, must be first established. When this is the position, the petitioner's presence is neither necessary nor proper. It cannot be said that no order can be effectively made without his presence, nor can it be said that the question at issue cannot be worked out without bringing him in. But the real objection is that the petitioner is bringing in a new case. Order 1 Rule 10 CPC cannot be applied, ignoring Order 1 Rule 3 CPC.

20. I also draw strength from two pronouncements of our Court. In Ramaswami v. Deivasigamani AIR 1947 Mad 395 it was held thus:

'If a person who has the same interest as the plaintiff or a common or like interest with him does not join in the institution of the suit or is impleaded only as a defendant it would be proper for a court to get him arrayed as co- plaintiff. But when A and B are disputing title to a property setting up rival claims it is not open to a third party, C to come on the scene and insist on his title which is contrary to that set up by A and B being investigated and it would not be right for the court to implead him as co-plaintiff and ask the defendant to fight the newly added man who comes into the arena at his own instance or at the suggestion of a colluding plaintiff.'

The same reasoning will apply to this case too. Here the petitioner comes on the scene insisting on a title, which is contrary to the rights of the trust asserted in the plaint, and the rights of respondents 3 to 6 asserted in the written statement. His case is that there is a Will and the grand children of the founder of the trust are the beneficiaries. He asks the court to investigate this, which is neither the plaintiff's case, nor the defendants' case. He wants the plaintiff to fight this totally new case entering the fray on his own instance. He cannot have his way.

21. The other decision is reported in Chidambaram Chettiar v. Subramaniam Chettiar AIR 1927 Mad 834 . Here the plaintiff sued for a declaration that a sale deed was obtained by defendant-1 benami for plaintiff's benefit, and for possession and mesne profits. The first defendant pleaded that the property was bought by him in his own right. Then a third party applied to be made as a party to the suit alleging that the defendant 1 was benami for both for the plaintiff and the third party. The lower court impleaded this third party. This court held that he had been improperly joined and observed '...matter to be adjudicated in the suit is whether plaintiff or defendant 1 is the real purchaser under the sale deed. If some third party wishes to claim that he is the real purchaser adversely to the pleas of both plaintiff and defendant he must file his own suit.' The matter to be adjudicated in the present suit is whether there was a trust and whether the property is a trust property. If the petitioner wants to claim that there was a Will under which the properties had been bequeathed to his vendors and he had acquired the title, it is well open to him to file his own suit, but he cannot be included in this suit. Civil Revision Petition is therefore, dismissed with costs. Consequently, no order is necessary in C.M.P. No. 4530 of 2003 and the same is closed.