
(1990) 08 MAD CK 0039

Madras High Court

Case No: None

M.M.S. Investment and
Others

APPELLANT

Vs

L. Venkatesan and
Others

RESPONDENT

Date of Decision: Aug. 23, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2), 52
- Provincial Insolvency Act, 1920 - Section 16

Citation: (1991) 1 LW 374 : (1991) 243 MLJ 1

Hon'ble Judges: K.M. Natarajan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

K.M. Natarajan, J.

L.P.A.No.113 of 1990 arises against the order passed in C.M.P.No.3707 of 1989 while C.M.P. No. 9570 of 1990

is a petition to grant leave to file an appeal against the order passed in C.M.P.No.4388 of 1990, dated 28.6.1990. Both L.P.A. No. 113 of 1990

and C.M.P. No. 9570 of 1990 arise out of a common order passed in C.M.P. Nos. 3707 of 1989 and 4388 of 1990 in A.S. No. 796 of 1987

by a learned single Judge of this Court. Notice of motion was ordered in L.P.A. No. 113 of 1990 and the respondents appeared through counsel.

In the meantime, C.M.P. No. 9570 of 1990, in an unnumbered appeal, was also filed and as per order of the First Bench consisting of Nainar

Sundaram and Somasundaram, JJ., dated 1.8.1990, it was posted before this Court on the ground that the same has some bearing with

L.P.A.No.113 of 1990. By consent of both parties, they were heard together and disposed of on merits.

2. The facts which are necessary for the disposal of both the matters can be briefly stated as follows : The property in question bearing door

No.82, Town Hall Road, Madurai, originally belonged to respondents, 1 to 5 herein. The sixth respondent filed a suit against respondents 1 to 5 in

O.S. No. 247 of 1981 on the file of the Sub Court, Madurai, for specific performance of an alleged agreement of sale said to have been executed

by respondents 1 to 5 in respect of a portion of the property, namely, three shops. When the suit was pending, respondents 1 to 5 executed an

irrevocable power of attorney dated 16.8.1982 in favour of one K. Chakrapani and K. Sethuramalingam who are the brothers-in-law of the

second appellant herein empowering the said Power of Attorney to manage and dispose of the suit property by executing sale deed in favour of the

wife of the second appellant and clear the debts due by them including the amount borrowed by the said Power of Attorney. The suit filed by the

sixth respondent in O.S. No. 247 of 1981 was resisted by respondents 1 to 5 themselves on the ground that the alleged agreement in favour of the

sixth respondent is a nominal one and it is not valid and no decree can be passed. On 30.4.1986 the said suit was decreed. Thereupon the two

Power of Attorney Agents filed an appeal against the said judgment in O.S. No. 247 of 1981, in their capacity as Power of Attorney Agents of

respondents 1 to 5 and the said appeal was numbered as A.S. No. 796 of 1987. They also executed various sale deeds from 7.4.1987 to

17.4.1987 in respect of the entire building in favour of the appellants in pursuance of the agreements dated 16.8.1982 executed by respondents 1

to 5 in favour of the wife of the second appellant. According to the appellants, in 1988 respondents 1 to 5 who have no further interest in the suit

property, started colluding with the sixth respondent, and anticipating trouble, they filed C.M.P. No. 3707 of 1989 in A.S. No. 796 of 1987, to

implead the appellants, namely, M.M.S. Investments through its Managing Director, P. Sethurajan, Minor Sukanya and Minor Manigandan

represented by their father and guardian P. Sethurajan, as party-appellants in the appeal, alleging that pending the proceedings, they purchased the

entire properly described in B Schedule properties which include the disputed property, forming part of A Schedule property, apart from other

properties, and having regard to the facts and circumstances of the case, it has become necessary for the appellants to implead themselves as

appellants in the appeal; otherwise, they would be put to irreparable hardship. When the matter was pending, respondents 1 to 5 filed C.M.P. No.

4388 of 1990 to revoke the vakalat given by the Power of Attorney Agents in the appeal, so as to enable them to prosecute the appeal by

themselves. The Power of Attorneys Agents, who have sold the property to the appellants have filed a counter-affidavit contending that it is an

irrevocable power of attorney and that they had parted with some property to the appellants. The learned single Judge of this Court (Srinivasan, J.)

allowed the application C.M.P. No. 4388 of 1990 holding that there can be no objection whatever for grant of the prayer as the parties to the

appeal can always claim that they should be permitted to conduct the appeal by themselves instead of through the Power of Attorney Agents who

originally filed the appeal. The learned single Judge dismissed C.M.P. No. 3707 of 1989 holding that the appellants herein have purchased the

property after the decree of the trial Court and in view of the close relationship between the purchasers and the vendors who are the power of

attorney agents prima facie suspicion surrounds the purchase made by the appellants herein and on the strength of the said purchase, the appellants

cannot seek to implead themselves as parties to the appeal. It was also observed that whatever rights they may have, they will have to work out as

against respondents 1 to 5 herein or their power of Attorney Agents in independent proceedings. Hence, the learned single Judge dismissed the

application, C.M.P. No. 3707 of 1989. Aggrieved by the same, L.P.A. No. 113 of 1990 was filed. As against the order in C.M.P. No. 4388 of

1990, C.M.P. No. 9570 of 1990 is filed to grant leave to file an appeal against the order in C.M.P. No. 4388 of 1990 as already stated above.

3. The learned Counsel for the appellants, Mr. R. Krishnamurthi, mainly submitted that though the petition C.M.P. No. 3707 of 1989 was pending

for nearly one year no counter was filed, and it is not known on what basis the learned single Judge observed that suspicion surrounds the purchase

made by the appellants herein. Further, even in January, 1989 the sixth respondent/plaintiff filed C.M.P. No. 1016 of 1989 to dismiss the very

appeal A.S.No.796 of 1987 as not maintainable and also for consequential relief, on the ground that the Power of Attorney Agents, who filed the

Appeal No. 769 of 1987 on behalf of respondents 1 to 5, have already sold the entire property and since the appeal has been presented after the

alienation of the property there is no valid presentation and as such the appeal preferred by them without power is incompetent. It was contended

in the said C.M.P. No. 1016 of 1989, by the Power of Attorney Agents that it was only the party against whom the decree was passed preferred

the appeal and when once respondents 1 to 5 are entitled to file appeal, they can do so through the power of attorney agents and there is nothing

to hold that the power of attorney exhausted after the execution of the sale deed in respect of those properties to third parties and that they have

got to safeguard the interest of the purchasers and are entitled to prosecute the appeal under the irrevocable power of attorney given by the original

owners who are the defendants. The said petition was dismissed on 24.10.1989. The learned Counsel also submitted that the learned single Judge

failed to see that the appellants had purchased the suit property from the admitted owners through their power of attorney agents when the said

power was admittedly in force and also in pursuance of the agreement of sale executed by the original owners. It is submitted that reference has

been made in the power of attorney authorising the power of attorney agent to execute sale deeds, and since the original owners have taken a

contrary view of the action of the power of attorney agents and they have put forward a claim that they have cancelled the power of attorney, the

rights of the appellants are involved very much in the appeal. They are necessary and proper Parties to the appeal. The learned Counsel also

submitted that the subsequent conduct of respondents 1 to 5 withdrawing the appeal in spite of the objection and after the L.P.A. was presented

clearly shows that they are colluding to defeat the rights of the appellants and unless they are impleaded as parties to this appeal, any decision

passed in this appeal will not be binding on them and they will be put to very great hardship and that they cannot raise their contentions in any

separate or independent suit. The learned Counsel also submitted that the appellants are virtually interested in defending the appeal and they only

want that the appeal should be disposed of on merits and as such the L.P.A. has to be allowed. It is further stated that the claim made by

respondents 1 to 5 based on the revocation of the power of attorneys should have been rejected as that would affect the rights of the appellants

and that having regard to the active collusion between the respondents, the learned Judge ought to have dismissed C.M.P. No. 4388 of 1990 and

ought to have safeguarded the rights of the appellants. Hence. leave is necessary.

4. On the other hand, the learned Counsel appearing for respondents 1 to 5, Mr. K.T. Paul Pandian submitted that the L.P.A. itself is not

maintainable as, subsequent to the impugned order which was passed on 28.6.1990 the appeal itself was dismissed on 3.7.1990 as withdrawn and

no appeal is pending. According to the learned Counsel, any order passed in the ancillary proceedings will merge with the main proceedings and in

the instant case, since the appeal itself was disposed of on 3.7.1990, the impugned order has merged with the same and hence no order can be

appealed against. He would further submit that order passed in the petition for impleading under Order 1, Rule 10, C.P.C. is not appealable order

and even though the present appeal is filed under Clause 15 of the Letters Patent, in view of the Code of Civil Procedure, the said order is not an

appealable one and as such it will merge with the order of appeal. According to the learned Counsel, except the order passed under Order 37,

C.P.C, the rest will only merge with the final orders. In this regard the learned Counsel placed reliance on the decision of the Division Bench

reported in *Madhu Sudan Sen v. Kamini Kanta Sen* ILR 32 Cal. 1023 and we will deal with same at the time of discussion of the points. Next it

was contended by the learned Counsel that the suit was decreed on 30.4.1986 and all the sale deeds, namely, 33 sale deeds, came into existence

between 9.4.1987 and 17.4.1987 in respect of the very same building and they did not take any action immediately after purchase. Further, the

petition has been filed only on the ground that they got interest in the property and that none of the ingredients which are required under Order 1,

Rule 10(2), C.P.C. have been made out. He would also submit that their purchase is affected by *lis pendens*. He would submit that the alleged

collusion between respondents 1 to 5 and the sixth respondent was long after the impugned order passed and that cannot now be taken into

consideration for deciding this appeal. It is submitted that the remedy of the appellants is only to proceed against respondents 1 to 5 as per terms

of the agreement of sale and not to ask for impleading themselves as parties in the appeal.

5. The two questions that arise for consideration in this appeal are:

1. Whether by virtue of the withdrawal of A.S. No. 796 of 1987 by respondents 1 to 5 herein on 3.7.1990, the present L.P.A. is not maintainable

against the order passed in C.M.P. No. 3707 of 1989, and

2. Whether the appellants are entitled to be impleaded as parties and the impugned order passed by the learned single judge is not sustainable?

6. As regards the first point, the learned Counsel for respondents 1 to 5, Mr. K.T. Paul Pandian submitted that the impugned order passed in the

application under Order 1, Rule 10, C.P.C. is one passed in the interlocutory application and just like the order passed in stay-application,

injunction-application which terminates when the main suit itself was disposed of, they being ancillary proceedings, they merge with the final orders.

Since the appeal itself is now no longer pending as it has been withdrawn, the L.P.A. against the impugned order itself is not maintainable. On that

ground alone, the appeal is to be dismissed. On the other hand, the learned Counsel appearing for the appellants, Mr. R. Krishnamurthy, submitted

that the application for interim stay, interim injunction and attachment before judgment and similar reliefs till the disposal of the suit or appeal, would

not survive after the matter is disposed of, but not the application like the one which is filed by a third party who wants to come on record by virtue

of certain subsequent events which took place while the matter was pending and it cannot be said to be ancillary proceedings which will merge with

the main proceedings. According to the learned Counsel, as rightly contended by the learned Counsel for the respondents, just like the proceedings

under Order 37, C.P.C. for granting leave, the petition under Order 1, Rule 10, C.P.C. would not merge. According to the learned Counsel, these

are all "dependent orders" and the disposal of the main suit or appeal would not be a bar for consideration of the appeal would not be a bar for

consideration of the application under Order 1, Rule 10, C.P.C. and that if the application is allowed, the appeal has to be reopened and to be

disposed of on merits after impleading the parties. In this connection, the learned Counsel drew the attention of this Court to the decision in Bankim

Chandra and Others Vs. Chandi Prasad, , wherein it was held:

It is well obvious from the entire scheme of law laid down in the CPC that interlocutory orders like one for stay are nothing but ancillary orders and

they are all meant to aid and supplement the ultimate decision arrived at in the main suit or appeal. Therefore, I hold that once a suit or appeal

dismissed for default is restored by the order of the Court, all ancillary orders passed in the suit or appeal before its dismissal also revive and

operate since that date with all their legal implications unless there is any other factor on the record or in the order passed to show to the contrary.

7. In this connection, it is worthwhile to consider the latest decision of the Supreme Court in G. Ramegowda, Major and Ors Vs. Special Land

Acquisition Officer, Bangalore, . That was a case where the claimants-respondents in certain land acquisition appeals before the High Court,

preferred appeals before the Supreme Court against the order condoning certain delays on the part of the Land Acquisition Officer in preferring

appeals. It was contended that during the pendency of the appeals before the Supreme Court, the High Court heard and disposed of the main

appeals on merits and that the appeals before the Supreme Court preferred, as they are against the mere condonation of delay, do not survive and

are to be held to have become infructuous. Their Lordships of the Supreme Court rejected the said submission as not sustainable by holding as

follows:

The fact that the main appeals are themselves, in the meanwhile, disposed of finally on the merits by the High Court would not by itself detract from

and bar a consideration of the correctness of the order condoning the delays. This is an instance of what are called dependent orders" and if the

order excusing the delays is itself set aside in the Supreme Court appeals, the further exercise, made in the meanwhile, by the High Court finally

disposing of the appeals would be rendered nugatory.

The ratio laid down in the above decision is in all fours applicable to the facts of this case. In the instant case, the impugned order was passed on

the application filed by the appellants to implead themselves as party-appellants even in 1989 and it was dismissed and as against the same, they

preferred this appeal on 3.7.1990. On the same day, A.S. No. 796 of 1987 came up for hearing before us. Therein, a memo was filed by the

respondents 1 to 5 herein (the appellants in A.S. No. 796 of 1987) stating that the matter has been settled out of court and they may be permitted

to withdraw the appeal, to which the sixth respondent has no objection. However, the learned Counsel appearing for the appellants herein

appeared and submitted that the appellants herein have already filed petition, C.M.P.No.3707 of 1989 to implead them as appellants 6 to 9, that

thesaid petition was dismissed and that thereafter they filed the present L.P.A. and prayed for adjournment of A.S.No.796 of 1987. The

respondents 1 to 6 herein through their counsel opposed the request stating. that the appellants herein are not parties to the proceedings in A.S.

No. 796 of 1987 and that their petition was dismissed on the ground that they have to work out their remedy in independent proceedings and as

such no adjournment need be granted. Accordingly, the adjournment was refused and the said appeal was dismissed. According to the learned

Counsel for the appellants, the appellants are interested in the appeal, that an order could be passed in the application to implead them as parties

under Order 1, Rule 10(2), C.P.C., that they could be added as appellants to prosecute the appeal and that it is not an ancillary order just like the

order of interim stay or interim injunction, attachment before judgment etc. which survives till the disposal of the main proceedings. But, as rightly

observed by their lordships of the Supreme Court in the above quoted case, the order passed in the instant case is a ""dependent order"" and if the

impugned order is set aside in the appeal, the final order passed in the appeal would be rendered nugatory and the disposal of the appeal would

not by itself detract and bar the consideration of the correctness of the impugned order. Applying the ratio laid down in the Supreme Court case,

the objection to the maintainability of the appeal has to fail.

8. The decision relied on by the learned Counsel for the respondents reported in Madhu Sudan Sen v. Kamini Kantasen ILR 32 Cal. 1023 is not

helpful to the case of the respondents in view of the decision of the Supreme Court cited above. That case arose u/s 588 of the old CPC where it

was held that the right of appeal from interlocutory orders ceases with the disposal, of the suit. But the impugned order is not an ancillary order but

a dependent order. It cannot be said that it does not survive with the final disposal of the appeal as contended by the respondents. Hence, we

answer the first point in favour of the appellants holding that the appeal is maintainable.

9. Point 2: As regards the second point with regard to the dismissal of the petition filed by the appellants for impleading them as party appellants

under Order 1, Rule 10(2), C.P.C. the learned Counsel for the appellants, as already submitted, contended that the appellants purchased the entire

property including the suit property which consists of 3 shops in the building in pursuance of the sale agreement entered into by respondents 1 to 5

through their Power of Attorney Agents and that respondents 1 to 5 by irrevocable power of attorney deed authorised the power of attorney

agents to execute sale deeds and by virtue of the same, they obtained the sale deeds for a valuable consideration. Though the sale is after the

disposal of the suit before the lower court and an appeal is filed, the decision in the suit was challenged by the power of attorney agents who

represented respondents 1 to 5 by filing appeal, A.S. No. 796 of 1987. The mere fact that the sale deed was executed after the disposal of the suit

cannot be a ground for negating the relief prayed for to implead them to safeguard the property. It is seen that the power of Attorneys of the

vendors who executed the sale deed was looking after the interest of the purchaser for all these days. Now respondents 1 to 5 colluded with the

sixth respondent and they are acting against the interest of the appellants and hence they should be impleaded. Their subsequent conduct in

withdrawing A.S. No. 796 of 1987 as settled out of court immediately after the disposal of the petition filed by the appellants herein to implead

from as party-appellants, only amply supports the contention of the appellants. The learned Counsel would submit that when once respondents 1

to 5 and 6 colluded together to withdraw the appeal and the decision in O.S. No. 247 of 1981 has become final, they cannot agitate the same in

separate proceedings ""and in any event, they will be put to very great hardship. They filed that petition even a year ago to implead them-as party-

appellants only to" prosecute the appeal and they are interested in the disposal of the appeal on merits and the order of the learned single Judge

directing them to agitate in independent proceedings against respondents 1 to 5 through their power of attorney agents is not a legal and proper

order as the appellants would be put to very great hardship. It is not in dispute that they have interest in the property even though their sale deeds

came into existence after the disposal of the suit and before the filing of the appeal. In fact, in the very appeal, the sixth respondent filed a petition

C.M.P. No. 1016 of 1989 wherein he admitted the sale in favour of the appellants by the power of attorney agents and asked for dismissal of the

appeal on the ground that the alienations were made after the judgment and that respondents 1 to 5 have no existing interest in the property and

consequently the power of attorney agents also have no interest in the property. The application filed by respondents 1 to 5 to revoke the vakalat

given by the power of attorney agents also supports the case of the appellants that they want to safeguard their interest. According to them, the

power of attorneys agents are now sought to be removed and respondents 1 to 5 want to prosecute the appeal and consequently withdraw the

appeal as settled out of court after their vakalat is revoked. The learned Counsel for the appellants submitted that this Court can take note of the

subsequent event in moulding the relief and that there cannot be any impediment for the same. On the other hand, the learned Counsel for

respondents 1 to 5 drew the attention of this Court to Order 1, Rule 10(2), C.P.C. and submitted that any person whose presence before the

Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle the questions involved in the suit can

be impleaded and not otherwise, and in the instant case even in the absence of these appellants, all questions involved in the appeal can be decided

and their presence is not necessary. The learned Counsel relied on the decision rendered by a single Judge of this Court in *Jaleel Sahib v.*

Seeniappa Ramaswami Mudaliar and Co. (1951) 1 M.L.J. 87. That was a case where a creditor filed an application for adjudging the petitioner

an insolvent. During the pendency of that petition, another creditor came forward with an application under Order 1, Rule 10, C.P.C. for adding

him as an additional party to the petition. It was held:

While a definite provision for substitution of a party has been made u/s 16 of the Provincial Insolvency Act, a creditor aggrieved by the conduct of

the petitioning creditor can come only by way of the substitution petition u/s 16 of the Act and not under Order 1, Rule 10 of the CPC to be added

as a party.

It was also held:

In the absence of any allegation or proof that the presence of the party is necessary for any effective and complete adjudication of the matters in

dispute, the petition could not be allowed.

That decision is not at all helpful to the case of the respondents, as there is a specific provision in the Provincial Insolvency Act for substitution of a

party and in the circumstances it was held in that case that Order 1, Rule 10, C.P.C. cannot be invoked. Next, the learned Counsel for the

respondents relied on the decision rendered by a learned single Judge of this Court in *Firm of Mahadeva Rice and Oil Mills and Others Vs.*

Chennimalai Goundar, wherein it was held:

No amount of assertion on the part of the parties to a Us to the effect that it would avoid multiplicity of suits, that it would be convenient for

purposes of trial, that it would not cause prejudice to any party, would be of any avail. If the cardinal test, namely, for a final adjudication of the

real controversy"" such addition is necessary, is not satisfied, then it cannot be said with any reasonable certainty that the proposed party is a

proper party. The following tests may be formulated usefully as a guidance in the case of adding of parties, under Order 1, Rule 10, C.P.C.: (1) If,

for the adjudication of the "real controversy" between the parties on record, the presence of a third party is necessary, then he can be impleaded;

(2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may

be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject matter which could still have been decided in the pending

suit itself; (3) The proposed party has a defined, subsisting, direct and substantive interest in the litigation, which interest is either legal or equitable

and which right is cognisable in law; (4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate

certain other grievances of one or the other of the parties on record which is neither necessary or expedient to be considered by the Court in the

pending litigation; and (5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant

matters are allowed to be considered by courts by adding a new party whose interest has no nexus to the subject-matter of the suit. AIR 1968

Mad. 142 and AIR 1958 S.C. 886 and AIR 1957 Mad. 699 and AIR 1953 Cal. 15 Rel. on.

The learned Counsel for the respondents relied on the above decision and submission that in view of the ratio therein, the appellants are not proper

parties. On the other hand, the learned Counsel for the appellants submitted that applying the ratio, the appellants are proper parties as it is

established that the proposed parties by virtue of the purchase have direct and substantive interest in the litigation and by impleading them,

multiplicity of suits over the subject matter could be avoided and because of their absence, their interest is virtually affected by any decision to be

made in the appeal and they have to safeguard their interest by adding themselves as parties. It is submitted that any decision passed in the suit in

their absence without impleading themselves as parties will certainly affect their rights and they cannot question the same later in any independent

proceedings.

10. In *Thiruvannamalai Adhinam Sri Daivasigamani In re.* 68 L.W. 371, this Court while considering impleading of parties under Order 1, Rule 10,

C.P.C has observed at page 373 as follows:

But a person is however a proper party if his presence before the Court is necessary to enable it to effectually and completely adjudicate upon and

settle all the questions involved in the suit. In other words, the expression ""proper party"" means a party who may be interested in their suit of the

suit and who may have a right to seek the assistance of the Court in coming to a decision on the point in issue. It is not necessary that any relief

should be asked against him, the object of adding him is only to avoid needless multiplicity of suits and to protect his interest or the interests of a

party already on record. It is not also necessary to justify the addition of a defendant that he should be interested in all the reliefs claimed in the suit

or in all the questions arising between the plaintiff and the other defendants. Though under Order 2, Rule 3, defendants cannot be added unless the

cause of action is the same as against all of them, they can be added under this rule although the causes of action are different.

In *C. KR. C.N.K.R. Adhappa Chettiar and Others Vs. R.M. Meenakshi Achi and Others*, , in a similar situation, after relying on the decision in

Annapoorani Aramal Vs. Jayavelu Mudaliar and Another, and in *Doraikannu Asari v. Nataraja Chetti* (1961) 2 M.L.J. 26 it was held:

In the present case, defendants 1 and 2 have sold their right, title and interest they hand over the suit property in entirety, to the first respondent

herein. There is a change of status due to the sale of the totality of the interest which defendants 1 and 2 had over the property. Defendants 1 and 2

have no more interest due to the same effected by them to the first respondent herein. Under the circumstances, and in view of the fact that the first

respondent becomes the sole and absolute owner of the property which is the subject matter of the suit, she is a necessary and proper party to the

appeal.

4. The learned Counsel for the petitioners next contends that the transfer of the property in question pending his suit is hit by Section 52 of the

Transfer of Property Act, and hence the order of the Court below is not sustainable. But, in my opinion, that is a matter to be gone into in the

appeal or in the suit and not in the impleading petition.

That was also a case where the purchaser during the pendency of proceedings filed a petition for impleading her as a party to the appeal and the

purchaser wanted to contest the appeal on the ground that she had purchased the property and the defendants have no interest in contesting the

matter. The application was allowed by the trial court and the order therein was confirmed by this Court for the reasons stated above. The said

decision is in all fours applicable to the facts of this case. The decision in *Raj Singh Vs. Ram Nivas and Another*, is also relevant. That was a case

where while a suit for specific performance of contract of sale of an agreement was pending, a third party purchased the property at an auction sale

and the plaintiff applied for impleading him as a defendant. The third-party was impleaded as defendant No. 7. Then defendant No. 7 applied for

striking out his name. The question arose whether he is a proper party. In that connection it was held after extracting Order 1, Rule 10, C.P.C.

This provision is meant to give to every person an opportunity of being heard whose rights might be affected by the ultimate decree. "It also

provides for striking out of the names of persons whose interest or rights may not be affected. If the court passes the decree for specific

performance of contract and the sale deed is to be executed it will necessarily cast a cloud on the interest of defendant No. 7. It cannot, therefore,

be said that he was improperly impleaded as party in the case, he was a proper party.

In *A Venkatramulu v. Satyanarayana Raju* (1982) 1 An. W.R. 190 it was held:

The provisions enacted in Order 1, Rule 10(2), Civil Procedure Code, have to be liberally construed. There might be a case where the Court may

not feel the necessity of the presence of the party so impleaded in the matter of adjudicating upon the point which is involved in the suit. But, yet

there might be a case, as has been rightly postulated by the learned Counsel for the respondents, wherein order to cause detriment to the cause of

the suit because of conspiracy between the two parties, the case might be either allowed or dismissed, as the case may be, causing thereby

damage to the interest of the impleading party. In this case, there may be a possibility that the second respondent, having sold the property, may

not evince any interest in forestalling the case as preferred by him in getting the defendant ejected and thereby the suit being eventually dismissed,

which would surely cause damage to the interest of the first respondent herein.

Applying the ratio in the above cases to the facts of this case, the appellants herein have to be given an opportunity of being heard as their rights

maybe affected by the ultimate decree, for specific performance of the contract. In *Razia Begum v. Sahebzadi Anwar Begum* (1958) 1 An.W.R. 1

it was held:

Effective adjudication mentioned in Order 1, Rule 10, was on not only between the parties to the suit but a final decision after bringing third parties

interested in the dispute on record.

On a careful reading of the provisions of Order 1, Rule 10, CPC and the various decisions cited above, we find that the appellants herein entered

into an agreement of purchase with the original owners, namely, respondents 1 to 5 who had authorised by an irrevocable power of attorney to

execute sale deeds and in pursuance of the same, the sale deeds were executed in favour of the appellants herein who are the proposed parties

and they now want to be impleaded themselves as parties to safeguard their interest in view of the change of circumstance, namely, the original

owners colluded with the plaintiff-sixth respondent herein, in the appeal and withdrew the appeal to their detriment after revoking the vakalat of the

power of attorney agents who executed the sale deed. In the circumstances, for the reasons discussed above, their presence is absolutely

necessary for deciding the main appeal on merits. The reasons given by the learned single Judge dismissing the petition directing them to work out

their remedy by initiating independent proceedings are not at all sustainable and as such, the application C.M.P. No. 3707 of 1989 is to be

allowed. This point is answered in favour of the appellants.

11. As far as the application, C.M.P. No. 9570 of 1990 to grant leave to the appellants herein to file an appeal against the order in C.M.P. No.

4388 of 1990, is concerned, it is seen that the power of attorney agents, whose power was revoked are the proper persons to question the said

order and not these appellants. However, in view of the fact that we have directed the appellant to be impleaded as party-appellants, they cannot

have any grievance for revoking the vakalat given by the power of attorney agents or respondents 1 to 5 as they were permitted to conduct the

appeal by themselves, the question whether the power of attorney is irrevokable or not need not be decided as it is a matter to be agitated by the

persons who are aggrieved by the same and not by these appellants. The present application is to revoke the vakalat given by the power of

attorney agents and grant permission to respondents 1 to 5 to continue the appeal by themselves as original defendants who are the owners of the

property. The learned Counsel for respondents 1 to 5 drew the attention of this Court to the decision in Manicka Gounder Vs. Muniammal, and

submitted that they have got a right to revoke the vakalat given by their power of attorney agents and that the power of attorney in question though

styled as irrevocable is not one as such. As already stated, that question need not be gone into in this appeal since we have taken the view that the

appellants have no locus standi to question the same as it is only in between the agent and the principal in respect of prosecuting the appeal.

12. Accordingly, L.P.A.No.113 of 1990 is allowed and the order passed by the learned single Judge in C.M.P. No. 3707 of 1989 is hereby set

aside and the same is allowed. Consequently, the appellants are directed to be impleaded as appellants 6 to 9 in A.S. No. 796 of 1987 and the

order passed by this Court in A.S. No. 796 of 1987 dismissing the appeal as withdrawn is hereby revoked and the appeal is reopened for

disposal on merits. C.M.P. No. 9570 of 1990 is dismissed and leave is refused. Interim stay granted in C.M.P. No. 8690 of 1990 is made

absolute. However there will be no order as to costs in the L.P.A. and the C.M.P.