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Madras High Court

Case No: CRP No. 3813 of 2000 and C.M.P. No. 20362 of 2000

Madras City Flour Mill Owners Association	APPELLANT
Vs	
M. Radha and Corporation of Chennai	RESPONDENT

Date of Decision: Dec. 19, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, Order 1 Rule 10(2), 115

Hon'ble Judges: V. Kanagaraj, J

Bench: Single Bench

Advocate: K.V. Sundararajan, for the Appellant; V. Bhiman for R1 and Mr. K.A. Ravindran for R2 and R3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Kanagaraj, J.
The Civil Revision Petition filed u/s 115 C.P.C. praying to set aside the fair and decretal dated 25.10.2000 made in I.A. No. 18535 of 1998 in O.S. No. 6553 of 1998 by the Court of XII Assistant City Civil Judge, Madras. Tracing the history of the above civil revision petition having come to be filed, it comes to be known that the petitioner herein has filed the suit in O.S. No. 6553 of 1998 before the Court of XII Assistant City Civil Judge, Madras for declaration. Pending the suit, the petitioner has filed a petition in I.A. No. 18535 of 2000 under Order 1 Rule 10 C.P.C. praying to implead the petitioner as third defendant in the suit and, since, the said petition was dismissed by the Court bellow, the petitioner in the suit has come forward to file the civil revision petition on certain grounds as broughtforth in the grounds of revision such as when this Court had directed that the lower court should consider the petitioner''s application according to law and dispose of the same on merits and had remanded the matter back to the trial court by order dated 21.7.2000 made in CRP

No. 3087 of 1999, the trial court has failed to consider the observations made in the order of this court and had erroneously dismissed the application; that It is also averred that the purpose and scope of the impleading application by the petitioner in O.S. No. 6553 of 1998 was not properly considered by the lower court and that the trial court erroneously held that the issue in O.S. No. 6553/98 could be decided even without impleading the petitioner herein as a party, when the petitioner''s case was that the respondent has been running the mill without necessary sanctions from the concerned authorities and also that in W.P. No. 14838 of 1995 filed by the petitioner, the same was disposed of on the basis of an undertaking given by the Corporation of Chennai; that the petitioner is a necessary party, which aspect has not been considered by the trial court and this vitiates the proceedings; that the learned trial Judge has also not taken into consideration the pendency of W.P. No. 5576 of 1998 on the file of this Court, where the respondents are party against whom a writ of mandamus is sought for; that on the basis of the objections raised by the first respondent alone and when the other respondents have not raised any objection to the petitioner being impleaded as a necessary party, the lower court ought to have allowed the application for impleading in the light of the order passed by this Court in CRP No. 3087 of 1999 and the observations made thereunder; that this grossly vitiates the proceedings. Hence, the present civil revision petition.

2. During arguments, the learned counsel appearing on behalf of the petitioner would submit that the petition has been filed by the petitioner herein in its capacity as the third party to implead itself as the third defendant to the suit, which has been filed by the first respondent herein, praying for declaration that the first respondent is entitled from the Corporation the licence to run the Flour Mill; that the main allegation is that she has put up construction in the patta land and that she has got No Objection Certificate from the various Authorities for running the Mill, but under the instigation of the petitioner, the licence was sought to be cancelled; that the respondents 2 and 3 are the defendants 1 and 2 in the suit; that they have also filed Original petition against the Telephone and Electric Department; that the petitioner is the Madras City Flour Mills Owners Association; that how it is a necessary party has been brought forth in the averments; that it has to pay Rs. 10,000/- to the plaintiff.

3. On such arguments, on facts the learned counsel would cite two judgments respectively reported in C.M.V. Krishnamachari Vs. M.D. Dhanalakshmi Ammal and Others, and M/s. Aliji Monoji and Co. Vs. Lalji Mavji and others, So far as the first judgment cited above is concerned, a learned Single Judge of this Court has held :

"... The language employed in Order 1, Rule 10(2) of CPC 1908, confers upon the Court a very wide jurisdiction and the Court should not be disposed to a curtailment of the powers more that what is expressly decided by judicial decisions binding on it.

The Madras High Court has consistently adopted a wider interpretation of the scope of Order 1, Rule 10 and in the state of authorities the contention that the expression

"the questions involved in the suit" in Order 1, Rule 10(2) should receive narrow view, namely, that - only questions as between the parties to the litigation and not questions between any of the parties to the suit and a third party even though touching the property which is the subject-matter of the suit - cannot be accepted....

"....The interest" that is necessary to make a person party is legal interest including equitable interest, that is an interest, which the law would recognise and uphold".

In the second judgment, it is held by the Lordships of the Honourable Apex Court:

"Where the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted. The landlord has a direct and substantial interest in the demised building before the demolition of which notice u/s 351 was issued. In the event of its demolition, his rights would materially be affected. His right, title and interest in the property demised to the tenant or licensee would be in jeopardy. It may be that the construction which is sought to be demolished by the Municipal Corporation was made with or without the consent of the landlord or the lessor. But the demolition would undoubtedly materially affect the right, title and interest in the property of the landlord. Under those circumstances, the landlord necessarily is a proper party, though the relief is sought for against the Municipal Corporation for perpetual injunction restraining the Municipal Corporation from demolition of the building. In this context the question whether the respondent-landlord had only commercial interest in the property would not arise."

4. On the otherhand, the learned counsel appearing on behalf of the respondents would vehemently oppose the application on ground that the petitioner is not at all a necessary party to proceed with the suit and with some motivated tactics to do harm to the respondents in running of her Flour Mills, the petitioner has come out to implead itself as a party to the suit proceeding. On such grounds, would ultimately the respondents would seek to dismiss the above Civil Revision Petition.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it could be assessed that the petitioner, a third party in the suit filed by the first respondent against the second and third respondents seeking declaration, directing the second and third respondents to issue a necessary No Objection Certificate and the Certificates for running her Flour Mills has come forward to file an Interlocutory Application seeking to implead the petitioner as a party, on certain grounds such as that it is a registered Society in the Societies Registration Act; that it has been established to create harmonious relationship among its members and in the best interest of the members and the general public it is functioning; that the petitioner is trying to erect the Mill in the Government land, which is not belonging to her etc; that in the

public I interest the petitioner has got the same to put forth certain points before the Court and thus stating that it is vitally interested party to the proceeding and thus seeking to implead it as the third defendant in the suit.

6.The lower Court having assessed the facts and circumstances was not able to see the petitioner''s interest in the suit, since it has raised its voice only against the interest of the petitioner and hence, would dismiss the application to implead it as a party. But on the otherhand, the lower Court has failed to realise that the points raised on the part of the petitioner in order to show that it is an interested party though not in its self-interest, but in the interest of the general public, it is more important than showing one''s own interest and therefore, for a healthy atmosphere to prevail, particularly in the licensing of the industries, such as the Flour Mill, since the petitioner has a say, it is always desirable to implead the petitioner as a party and to give an opportunity for the petitioner to be heard in full, so as to decide the matter in consideration of all the facts and circumstances encircling the whole affair regarding the licensing of the first respondent for running a Flour Mill with a general honest thought and for the common good of all.

Moreover, the law is liberal and it permits the interested parties to be impleaded in the legal interest including equitable interest that is an interest, which the law would recognise and uphold as it has been held in the judgment first cited above and therefore, this Court is of the view that the lower Court has erred in rejecting the plea of the petitioner, ultimately dismissing his application filed under Order 1 Rule 10 of C.P.C. to implead it as a party/defendant No. 3 to the suit filed in O.S. No. 6553 of 1998 on the file of the lower Court and hence, the following order:

In result,

i. the above Civil Revision Petition is allowed;

ii. the fair and decretal order dated 25-10-2000 made in I.A. No. 18535 of 1998 in O.S. No. 6553 of 1998 by the Court of XII Assistant City Civil Judge, Madras, is set aside;

iii. there shall be no order as to costs.