
**Rajapalayam Town Amman Pottal Middle North Street Pallar Common
Fund and another Vs Rajapalayam Town Amman Pottal Street Devandra
Kula Velalar Community and 4 others**

C.R.P. (NPD) No"s. 1155 to 1159 of 2007

Court: Madras High Court (Madurai Bench)

Date of Decision: June 24, 2009

Citation: (2009) 5 CTC 259

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: K. Srinivasan, for the Appellant; P. Velmurugan, Advocate, for the Respondent

Judgement

M.M. Sundresh, J.

The petitioner herein being third party to the Suit filed by the first respondent herein filed an Application in I.A. No.

1418 of 2006 in O.S. No. 107 of 2005 seeking to implead themselves as a party/defendant. The Suit has been filed by the first respondent herein

in O.S. No. 107 of 2005 seeking for the relief of framing the scheme and for permanent injunction restraining the defendants in the Suit from

interfering with the right to conduct the Chithirai Venkudai Festival on 14.4.2005. The said Suit has been filed on the ground that there was an

earlier proceedings in O.S. No. 164 of 1981 in which, on the file of the Sub-Court, Srivilliputhur in which, the first respondent/plaintiff in the

present Suit has been allotted 2 $\frac{1}{2}$ shares out of the 12 shares. Therefore, on that basis the present Suit on hand has been filed.

2. The petitioner herein filed the Application for impleading on the ground that out of the 2 $\frac{1}{2}$ share allotted to first respondent/plaintiff in the

earlier proceedings. The petitioner is entitled to 1 $\frac{1}{2}$ share. According to the petitioner that even though, the petitioner is not a party to the earlier

Suit, the petitioner is entitled to get the share since, at that point of time, the first respondent/plaintiff represented the petitioner as well. Hence,

according to the petitioner, the petitioner is a necessary and proper party for deciding the Suit in O.S. No. 107 of 2005, since the first respondent

has deliberately not impleaded the petitioner overlooking its share.

3. On the contrary, the learned counsel for the first respondent submitted that the very Application is misconceived. The petitioners having filed a

separate Suit in O.S. No. 68 of 2004, seeking for a partition of the said $1\frac{1}{2}$ share before the same Court, the said dispute cannot be adjudicated

in the present Suit. According to the learned counsel, the issue involved in the present Suit is as to whether a scheme could be framed or not and

therefore, the rights of the petitioner cannot be adjudicated in the present Suit. Further, the learned counsel has contended that the rights of the

petitioner have not been shown to be affected and the reliance sought for is not against the petitioner and in any case, there is no cause of action for

the plaintiff against the petitioners warranting the impleading of the petitioner.

4. The Trial Court on considering the facts and circumstances of the case, has chosen to reject the Application. In fact, it is also pointed out by the

learned counsel for the first respondent that even on an earlier occasion, the Application filed by the petitioner was dismissed. The Court below has

dismissed the Application by holding that the petitioner is neither proper nor necessary party in deciding the Suit. Being aggrieved by the same, the

Revision has been filed. The learned counsel for the petitioner submitted that the Suit filed by him in O.S. No. 68 of 2004, is earlier the point of

time and after knowing the same the first respondent has deliberately not impleaded the petitioner.

5. The learned counsel for the petitioner submitted that the petitioner is a necessary and proper party for the adjudication of the case. According to

the learned counsel that in order to avoid the multiplier proceedings the Application will have to be ordered. On the contrary, the learned counsel

for the respondent submitted in as much as the relief sought for in the present Suit is totally different from the grievance of the petitioner and having

filed a separate Suit for ventilating his grievance, the petitioner cannot maintain the Application. The learned counsel submitted that the order

passed in Revision in C.R.P. No. 901 to 903 of 2005 dated 8.12.2005 is binding of the petitioner and the present Application is not

maintainable.

6. I have considered the rival submissions made by the counsels appearing for the parties. In the case on hand, the first respondent herein has filed

the Suit seeking to frame a scheme based upon his right accrued to him under the earlier judgment rendered in O.S. No. 164 of 1981, on the file of

Sub-Court, Srivilliputhur. Admittedly the petitioner herein was not a party in the said Suit. However, pending that the petitioner is entitled to $1\frac{1}{2}$

share out of 12 shares allotted to the first respondent, the petitioner has filed the present Suit in O.S. No. 68 of 2004 before the same Court. The

relief sought for in the present Suit filed by the petitioner in his Suit are totally different. The petitioner cannot adjudicate his independent right in a

Suit filed by the first respondent. The petitioner having rightly filed a separate Suit cannot be sought to implead itself in the present Suit. The issue

involved in the both Suits are distinct and different.

7. As rightly contended by the learned counsel for the petitioner, there is not cause of action arising for the first respondent/plaintiff as against the

petitioner. In order to find out whether a person is a necessary or proper party, it must be shown by the person concerned that he has got a right to

some relief against such party in respect of involving in the proceedings. It is also to be shown that in the absence of the proposed party no

effective decree can be passed. It is also to be noted that a party shall not be impleaded as defendant merely, because he will be affected by the

order of the Court incidentally. The learned counsel for the petitioner relied upon two judgments of the Hon"ble High Court reported in Sundara

Thevar and others v. Gurusamy Thevar and others, 2006 (5) CTC 158 : 2006 (4) MLJ 1188 and reported in Kandasamy and Venkatesh Vs. M.

Palanisamy, M. Sarojini and Soundappa Chetty, . On perusal of the said judgment, this Court is of the opinion that there are not applicable to the

facts and circumstances of the present case. In those cases, the Court below have held that the proposed parties are proper and necessary parties

on the facts of those cases. The Hon"ble High Court has also held that for proper adjudication the parties are necessary. Therefore, this Court is of

the opinion that the judgments relied upon by the petitioner are not applicable to the present case.

8. In Dr. s. Kameswaran Vs. A. Jayaraman and another, , a Division Bench of Hon"ble High Court has held that when there is no cause of action

for the plaintiff against the proposed party the said party cannot be impleaded. In State of Madhya Pradesh and Others Vs. Paltan Mallah and

Others etc., , the Hon"ble Supreme Court has held that, it has to be established by the party who proposed to implead itself that he has got a right

to some relief in respect of proceedings and without him no effective decree can be passed. In other words Hon"ble Supreme Court has held that

without the presence of the party who propose to implead himself there cannot be any proper adjudication. In a recent judgment reported in V.

Ravi @ P.V. Ravi Vs. V. Balakrishnan and Others , the Hon"ble High Court has held that a party should not be added as a defendant merely

because he will be affected by the order incidentally, therefore, this Court is of the opinion that the petitioner is neither necessary nor a proper

party in the Suit.

9. On a perusal of Order 10, Rule 1, it is seen that it is for the plaintiff to choose a party as a defendant in the Suit. In a Suit filed by the plaintiff, the

plaintiff is the dominus litis and therefore, in normal circumstances a person cannot be impleaded as a party. In a recent judgment reported in M.

Sathishkumar Vs. M. Ramasamy and 5 others , the Hon"ble High Court has held that a plaintiff in a Suit cannot be compelled to add parties

against whom he does not want to fight unless it is a compulsion of the rule of law. Similarly, in the judgment reported in S. Ramaswamy and four

others Vs. The State of Tamil Nadu and another, , the Hon"ble High Court has held that the plaintiff being the dominus litis, an Application for

impelading by a third party cannot be allowed for the mere asking. Therefore, taking into consideration of the above said facts and this Court is of

the opinion that the Revision filed by the petitioner deserves to be dismissed. However, in view of the fact that the petitioner herein has filed a

separate Suit in O.S. No. 68 of 2004, seeking partition of his right of his 1 1/4 share against the first respondent herein and also in view of the fact

that the said Suit is also pending on the file of the very same Court namely, Principal District Munsif Court, Srivalliputhur, this Court is of the

opinion that interest of justice would require that both Suits should be tried together. Accordingly, the Trial Court is directed to try O.S. No. 68 of

2004 and O.S. No. 107 of 2005 together and dispose of the same, within a period of three months a from the date of receipt of a copy of this

order. No costs.