

(2009) 06 MAD CK 0251

Madras High Court (Madurai Bench)

Case No: C.R.P. (NPD) No's. 1155 to 1159 of 2007

Rajapalayam Town Amman
Pottal Middle North Street Pallar
Common Fund and another

APPELLANT

Vs

Rajapalayam Town Amman
Pottal Street Devandra Kula
Velalar Community and 4 others

RESPONDENT

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♦ 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♦ share allotted to first respondent/plaintiff in the earlier proceedings. The petitioner is entitled to 1♦ 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 ♦ 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 ♦ 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.