

(2010) 04 MAD CK 0339

Madras High Court

Case No: C.R.P. (PD) No. 703 of 2009 and M.P. No. 1 of 2009

Sm. Laxmi Suresh

APPELLANT

Vs

Sri Aduikesava Perumal Peyalwar
Devasthanam and Sri Vedantha
Desikar Devasthanam

RESPONDENT

Date of Decision: April 21, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227

Citation: (2010) 3 LW 62

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: T.V. Krishnamachari, for V.K. Elango, for the Appellant; D. Rajagopal, for R1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

This Civil Revision Petition has been filed against the order, dated 29.11.2008, made in I.A. No. 18166 of 2007, in O.S. No. 7288 of 2005, on the file of the VII Assistant, City Civil Court, Chennai.

2. The Petitioner in the civil revision petition is the third Defendant in the suit, in O.S. No. 7288 of 2005, filed by the first Respondent herein, praying for a decree for permanent injunction, restraining the Defendants and others from interfering with the peaceful possession and enjoyment of the suit schedule mentioned property, by the Plaintiff and for costs.

3. The Petitioner had filed an interlocutory application, in I.A. No. 18166 of 2007, in the said suit, praying that the trial Court may be pleased to implead Sri Vedantha Desikar Devasthanam, represented by its trustees, as the fourth Defendant in the suit, in O.S. No. 7288 of 2005, on the file of the VII Assistant, City Civil Court, Chennai.

4. In the said interlocutory application, the Petitioner had stated that the first Respondent Devasthanam, which is the Plaintiff in the suit, in O.S. No. 7288 of 2005, was attempting to put up an unauthorised construction in the land belonging to the Government, by encroaching upon the said property. The first Respondent Devasthanam was trying to put up the construction, without any proper planning permission and without proving its lawful title and possession of the said property. It had also been stated that the Petitioner had received several complaints from the public, as well as from the adjacent temple, namely, Sri Vedantha Desikar Devasthanam, which is the proposed party in the interlocutory application.

5. The Petitioner had also stated that the first Respondent Devasthanam had attempted to put up a cattle shed in the property in question. Several complaints had been made by the local residents and by the proposed party, to the Respondents in the application, as well as to the revenue authorities of the State Government. A public interest litigation had also been initiated before the High Court of Judicature at Madras. Since, the proposed party, namely, Sri Vedantha Desikar Devasthanam, is a necessary party for an effective adjudication in the suit, in O.S. No. 7288 of 2005, the Petitioner had filed the interlocutory application, in I.A. No. 18166 of 2007, to implead Sri Vedantha Desikar Devasthanam, rep. by its trustees, as the fourth Defendant in the suit in O.S. No. 7288 of 2005.

6. In the Counter affidavit filed on behalf of the first Respondent, the averments and allegations made by the Petitioner, in the affidavit filed in support of the interlocutory application, had been denied. It had been stated that the application filed by the Petitioner to implead Sri Vedantha Desikar Devasthanam, as the fourth Defendant in the suit, is unsustainable, both in law and on the facts of the case. The first Respondent Devasthanam, which is the Plaintiff in the suit, in O.S. No. 7288 of 2005, is the "dominus litus" and therefore, it can choose the parties to the suit. The Petitioner, who is the third Defendant in the suit, cannot compel the first Respondent to contest the suit against the proposed party. If the proposed party has a cause of action it can file a separate suit to establish its rights, if any. However, making the proposed party, as the fourth Defendant in the suit filed by the first Respondent would not, in any way, help the trial Court to decide the issues arising for its consideration, more effectively.

7. It has also been stated that the Petitioner had filed the interlocutory application, only as an afterthought, in view of the interlocutory application filed by the first Respondent, in I.A. No. 15124 of 2007, to strike out the third Defendant from being a party to the suit. The proposed party is neither a necessary party, nor a proper party

to the suit. The Petitioner is no longer the Councilor representing the locality, and therefore, she has no locus standi to espouse the cause of individual persons and other entities. Therefore, the interlocutory application filed by the Petitioner, in I.A. No. 18166 of 2007, is liable to be dismissed.

8. The trial Court, after taking into consideration the rival contentions, had passed the order, dated 29.11.2008, dismissing the interlocutory application filed by the Petitioner. The trial Court had found that the proposed party, namely, Sri Vedantha Desikar Devasthanam, is neither a necessary party, nor a proper party to the suit. It had held that the proposed party need not be impleaded in the suit, as the fourth Defendant, in order to decide the issues arising for its consideration in the suit, in O.S. No. 7288 of 2005, filed for a decree of bare injunction. The trial Court had also noted that the proposed party had not filed the interlocutory application for impleading itself, as a party to the suit. It is the third Defendant in the suit who had filed the application for impleading the proposed party, namely, Sri Vedandia Desikar Devasthanam. In such circumstances, the trial Court had rejected the request of the Petitioner to implead the proposed party, as the fourth Defendant in the suit Aggrieved by the order of the trial Court, dated 29.11.2008, made in I.A. No. 18166 of 2007, the Petitioner has preferred the present civil revision petition before this Court, under Article 227 of the Constitution of India.

9. The learned Counsel appearing on behalf of the Petitioner had submitted that the trial Court had failed to see that the property in question is a government land, which is being encroached upon by the first Respondent. The proposed party, which is in possession of the adjacent property, is a proper and necessary party to decide the issues arising for the adjudication of the trial Court. For an effective decision to be made by the trial Court, the proposed party should be impleaded as the fourth Defendant in the suit, as he is a necessary party. The trial Court had erred in rejecting the request of the Petitioner to implead the proposed party, as the fourth Defendant in the suit, stating that the said party had not filed the application for its impleadment. Therefore, the order passed by the trial Court, on 29.11.2008, in I.A. No. 18166 of 2007, is to be set aside, to enable the impleadment of the proposed party, as the fourth Defendant in the suit, for an effective adjudication of the dispute by the trial Court.

10. The learned Counsel appearing on behalf of the Petitioner had relied on the following decisions in support of his contentions:

10.1. In *Bhogadi Kannababu v. Vuggina Pydamma* [2006(3) M.L.J 105 : 2007-1-L.W. 811 (S.C.)], the Supreme Court had held as follows:

"In an application for impleadment under Order I Rule 10 Code of Civil Procedure, the Court would only decide whether the presence of the applicant would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. But the question of strict

proof whether the applicants were also entitled to the rights involved in the proceedings, may not be germane for decision."

10.2. In [Nachammal Vs. Lavangammal](#), , a learned Single judge of this Court, while deciding the issue relating to impleadment of a party to the suit, had relied on the decision of the Supreme Court, reported in [Amit Kumar Shaw and Another Vs. Farida Khatoon and Another](#), wherein it had been held that the object of Order 1, Rule 10 of the Code of Civil Procedure, 1908, is to discourage contests on technical pleas and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under the above Rule, a person may be added as a party to a suit only in the following two cases: (1) When he ought to have been joined as Plaintiff or Defendant, and is not joined so, or (2) When, without his presence, the questions in the suit cannot be completely decided. The power of a court to add a party to the proceedings cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right.

10.3. In [Dr. T. Vijayendradas and Dr. Indira Vijayendradas Vs. M. Subramanian and Others](#), , it had been held that a necessary party is one without whom no order can be made effectively and a proper party is one whose presence is necessary for the complete and final decision on the issues involved in the proceedings.

10.4. In *S. Krishnan v. Rathinavel Naicker and Ors.* (2007 2 LW 810) it has been held as follows:

"It is well settled that a Plaintiff is the dominus litus in a suit and he is free to implead any one as the Defendant in the suit instituted by him. But it does not mean that he can do so at his sweet will. The term "at any stage of the proceedings" appearing in Order I, Rule 10(2) Code of Criminal Procedure, though would encompass within itself the appellate stage, will not entitle the Plaintiff to use it as an open, free and general license to implead anyone, at any stage, without establishing that they are necessary or proper parties to the litigation. "Proper party" is defined as one whose presence is necessary for complete and effectual adjudication of the dispute, though no relief is sought against him."

From the above decisions, it is seen that the Courts have reiterated the position that the Plaintiff, as the "dominus litus", would have the privilege of choosing the parties to the suit.

11. The learned Counsel appearing on behalf of the first Respondent had submitted that the trial Court was right in rejecting the interlocutory application filed by the Petitioner, who is the third Defendant in the suit, in O.S. No. 7288 of 2005. The proposed party, namely, Sri Vedantha Desikar Devasthanam, is neither a proper party, nor a necessary party to the suit. The proposed party had not chosen to file

an application for its impleadment, as a party to the suit. It is only the third Defendant, who had filed the interlocutory application, proposing to implead the proposed party, as a party to the suit proceedings, without having the locus standi to do so. Since, the suit, filed by the first Respondent, is only for a decree of bare injunction, there is no necessity for impleading the proposed party for an effective adjudication of the issues arising before the trial Court.

12. The learned Counsel appearing on behalf of the first Respondent had relied on the decision, reported in [Somasundaram Chettiar and others Vs. Balasubramanian](#), , wherein it had been held as follows:

10. It is well settled law that the Plaintiff may choose to implead only those person as Defendants against whom he wishes to proceed with. However, it is open to the Court to add, at any stage of the suit, a necessary party in order to enable the Court to effectually and completely adjudicate upon the questions involved in the suit. Thus, the question of impleadment of party has to be decided under Order 1, Rule 10, Code of Criminal Procedure, which provides that only a necessary or proper party may be added.

11. A necessary party is one without whom no order can be effectively made. A proper party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. Therefore, the addition of parties thus, would depend upon the judicial discretion which has to be exercised, in view of the facts and circumstances of a particular case.

12. The person to be joined must be one whose presence is necessary as party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved that would only make him as necessary witness.

13. In view of the submissions made by the learned Counsel s appearing on behalf of the parties concerned and on a perusal of the records available, and in view of the decisions cited above, this Court is of the considered view that the Petitioner has not shown sufficient cause or reason to grant the reliefs, as prayed for by the Petitioner in the present civil revision petition. The Petitioner has not been in a position to show that the proposed party, namely, Sri Vedantha Desikar Devasthanam, is a proper and necessary party to the suit, as claimed by the Petitioner. The trial Court was right in rejecting the interlocutory application filed by the Petitioner to implead the proposed party, as the fourth Defendant in the suit. As the suit filed by the first Respondent is only for a bare injunction the trial Court had found that the proposed party is neither a proper party, nor a necessary party to the suit. It had found that the impleadment of the proposed party is not necessary for an effective adjudication of the issues arising for its consideration.

14. The trial Court had also noted that the proposed party had not chosen to file an application to implead itself, as a party to the proceedings in the suit. It is only the

third Defendant who had filed the interlocutory application proposing to implead Sri Vedantha Desikar Devasthanam, as the fourth Defendant in the suit. Further, the first Respondent Devasthanam, which is the Plaintiff in the suit, in O.S. No. 7288 of 2005, being the "dominus litus", could choose the parties to the suit. Therefore, it is for the court concerned to decide as to whether a party is a necessary or a proper party to the proceedings before it, in view of the facts and circumstances of the case.

15. Further, It is clear from the above decisions that the Plaintiff in a suit is the "dominus litus", who could choose the parties to the suit. It is also clear that a necessary party is one without whom no effective order can be made and a proper party is one whose presence is necessary for a complete and final decision to be made by the Court concerned.

16. In such circumstances, this Court does not find sufficient reason to allow the civil revision petition. As such, the civil revision petition filed by the Petitioner, challenging the order of the learned VII Assistant Judge, City Civil Court, Chennai, dated 29.11.2008, is devoid of merits. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.